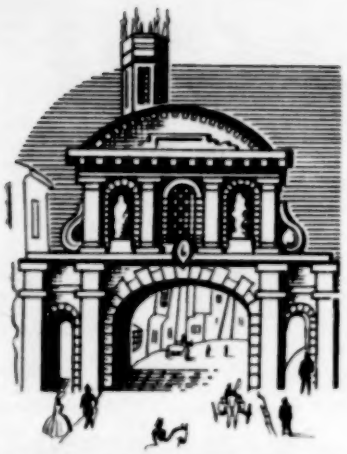

JUSTICE OF THE PEACE & LOCAL GOVERNMENT REVIEW

Saturday, May 21, 1955 **Vol. CXIX. No. 21**

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt 2 p.m. Wednesday*

Published by JUSTICE OF THE PEACE LTD., Little London, Chichester, Sussex
Telephone : CHICHESTER 3637 (P.B.E.) *Telegraphic Address :* JUSLOCGOV, CHICHESTER

NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

METROPOLITAN BOROUGH OF CAMBERWELL

Appointment of Assistant Solicitor

SALARY SCALE £720 by annual increments of £30 to £930 inclusive of £30 London weighting. Commencing salary according to experience. Application form from Town Clerk, Town Hall, Camberwell, S.E.5. Closing date Tuesday, May 31, 1955.

Amended Advertisement

COUNTY COUNCIL OF MIDDLESEX

Appointment of Deputy Clerk of the County Council

APPLICATIONS are invited from Solicitors with extensive local government and legal experience for the office of Deputy Clerk of the County Council.

Salary £2,750, rising by five annual increments of £100 to £3,250 per annum. The commencing salary may, according to qualifications or experience, be above the minimum of this scale.

The successful applicant will be required to satisfy the County Medical Officer as to medical fitness.

Canvassing in any form will be a disqualification, and every applicant must disclose whether he is related to any member or senior officer of the Council.

Applications, stating age, full details of experience and qualifications, and the names and addresses of three persons to whom reference can be made, are to be sent to me not later than June 6, 1955.

KENNETH GOODACRE,
Clerk of the County Council.

Middlesex Guildhall,
Westminster, S.W.1.

CITY OF PLYMOUTH require Conveyancing Clerk

AT a salary on Grade A.P.T. I (£500 × £20—£580) commencing at a point appropriate to the applicant's experience. Post pensionable and subject to medical examination. Experience in a Local Government Office not essential. Apply giving details of experience (particularly conveyancing), present and previous employment, and names of two referees, to Town Clerk, Pounds House, Peverell, Plymouth, before Wednesday, May 25, 1955.

BOROUGH OF GILLINGHAM

Appointment of Assistant Solicitor

APPLICATIONS are invited for the above appointment. Experience of conveyancing and advocacy necessary but previous local government service not essential. The appointment will offer wide opportunities for obtaining all-round experience of local government law and administration.

Salary £780 rising to £900. The National Conditions of Service and the Local Government Superannuation Acts 1937/53 will apply to appointment.

Applications, giving the names of two referees, to be forwarded to the undersigned by not later than May 31, 1955.

Canvassing directly or indirectly will disqualify.

FRANK HILL.
Town Clerk.

Municipal Buildings,
Gillingham, Kent.
May 6, 1955.

COUNTY BOROUGH OF DARLINGTON

Assistant Solicitor

APPLICATIONS are invited for the above appointment at a salary in accordance with age and experience within the current N.J.C. salary scale, namely, £690 × £30 — £900 per annum. Previous experience in the office of a local authority not essential. No Council housing accommodation is available. Applications giving the names of two referees and endorsed " Assistant Solicitor " must reach me before noon on May 30, 1955.

H. HOPKINS,
Town Clerk.

11 Houndgate,
Darlington.

COUNTY BOROUGH OF SOUTHAMPTON

Assistant Solicitor (Prosecutions)

APPLICATIONS are invited for this appointment. Salary within Grade V. Closing date June 1, 1955. Application form from the undersigned.

A. NORMAN SCHOFIELD,
Town Clerk.

Civic Centre,
Southampton.
May 12, 1955.

COUNTY OF LEICESTER

Appointment of Clerk to the Justices for the Ashby Division

APPLICATIONS are invited from persons qualified under s. 20 of the Justices of the Peace Act, 1949, for the full-time appointment of Clerk to the Justices for the Petty Sessional Division of Ashby-de-la-Zouch. Salary £1,250 × £50—£1,500. Conditions of service will be those agreed by the Joint Negotiating Committee for Justices' Clerks. Office accommodation and clerical assistance will be provided in Ashby-de-la-Zouch or Coalville.

Applications, giving full details of qualifications and experience and the names of two referees, should reach me not later than June 27, 1955.

JOHN A. CHATTERTON,
Clerk of the Magistrates' Courts Committee.

County Offices,
Grey Friars,
Leicester.

CITY OF SALFORD

Appointment of Full-time Female Probation Officer

APPLICATIONS are invited for the appointment of a full-time female Probation Officer.

Applicants must not be less than 23 nor more than 40 years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949 to 1955, and the salary will be according to the scale prescribed by those Rules.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned not later than June 4, 1955.

J. W. REAVEY,
Secretary of the Probation Committee.

Justices' Clerk's Office,
Magistrates' Court,
Town Hall, Salford, 3.

COUNTY BOROUGH OF EAST HAM

APPLICATIONS are invited for the appointment of First Assistant in the office of the Clerk to the Justices of this County Borough. The salary payable is £675 per annum rising by annual increments of £30 to £825 per annum (plus London Weighting £20—£30 according to age).

Conditions of service applicable to Local Government Officers are at present in force.

The post is superannuable and subject to a medical examination.

Applicants must have a sound knowledge of magisterial accounts, and be competent to act as Clerk of the Court as and when required.

Applications, giving the names and addresses of two referees, must reach me not later than May 24, 1955.

E. S. GONNING,
Clerk to the Magistrates' Courts Committee.

Town Hall,
East Ham, E.6.

Justice of the Peace and LOCAL GOVERNMENT REVIEW

ESTABLISHED 1837

[Registered at the General Post Office as a Newspaper]

LONDON :

SATURDAY, MAY 21, 1955

Vol. CXIX. No. 21. Pages 324–339

Offices : LITTLE LONDON, CHICHESTER, SUSSEX

Chichester 3637 (Private Branch Exchange).

Showroom and Advertising: 11 & 12 Bell Yard, Temple Bar, W.C.2. Holborn 6900

Price 2*s.* 3*d.* (including Reports), 1*s.* 3*d.* (without Reports).

CONTENTS

REPORTS

NOTES OF THE WEEK

Leading Questions

The rule against putting leading questions in examination-in-chief is sometimes broken by consent of parties and without objection from the court, when the subject to which the questions refer is something that is undisputed and necessary to prove only in order to complete the story of events. Such questions often relate to such points as time and place, or to persons concerned. However, if leading questions are allowed at all, they should be strictly limited.

Strong observations were made in the Court of Appeal by the Master of the Rolls in *Benson* v. *Benson and Another* (1955) 219 L.T. 223, an appeal in proceedings relating to divorce and custody of children. The divorce petition had been undefended, and it appeared from the transcript that the evidence of the petitioner had been elicited by a series of leading questions. Many vital matters, said the Master of the Rolls, were the subject of two questions rolled into one. This matter, he said, had been the subject of animadversions by the Court on other occasions, and he hoped that notice would now be taken. Proceedings in divorce must not be so conducted. Evidence so extracted was practically valueless.

Although these observations referred to divorce proceedings, they are applicable to cases heard by magistrates. If testimony on oath is necessary it should be elicited by means of questions that cannot be described as leading. It may be that a witness if allowed to tell his own story, will not make the same statements as he made in his proof, whereas if leading questions are allowed he may assent to suggestions. That a witness departs from his proof may be inconvenient and embarrassing to the party who has called him but whether he does so because his proof was not the truth or because he is now departing from the truth, it is better that his evidence should be in answer to admissible questions. If his evidence is to be of value it must be his own, and as far as possible given in his own way.

When hearing complaints, except those relating to civil debts or variation of periodical payments, magistrates must hear evidence. It may be that in some cases, for instance matrimonial proceedings, there is an admission that the ground of complaint is not disputed. Nevertheless, evidence on oath must be given, and leading questions should not be put.

Level Crossings

Everyone who has occasion to drive often in or through Lincoln must have read with satisfaction the announcement that a scheme for relieving traffic congestion in that historic and attractive city has at last been approved. One of the greatest difficulties has been the existence of three level crossings on main roads, including two in the High Street. It is intended to construct a viaduct that will make it possible to abolish one level crossing in the busy part of the city, and to relieve the High Street, which will apparently retain its level crossings, of all but local traffic. Through traffic should then be able to run easily by the new route.

Delays have naturally been considerable in present conditions, and there will be much saving of time when the new arrangement is in operation. Level crossings in a busy town always cause congestion, and it is a pity the scheme cannot include the abolition of all of them, as did an earlier scheme abandoned because of the war. However, what is being done will certainly be a relief.

Level crossings are an occasional cause of accidents and a frequent cause of delays. A correspondent stated in the press not long ago how many hours he calculated he wasted every year through having to use a road daily where he had to negotiate a level crossing. We have forgotten the figure, but it was astonishing, and if it were multiplied by the number of persons in like case the result would show that level crossings were expensive of time and consequently of money. There is the further point that a driver who has been seriously delayed is apt to become exasperated, and, anxious to make up for lost time, inclined to drive fast and to take risks. Thus, level crossings are a possible indirect cause of accidents, as well as the direct cause of a few. It would be a good thing if they could all be abolished.

Licence for a Slaughter-house

The question whether premises can be considered unsuitable for a slaughter-house because of their nearness to inhabited premises, to which we referred in a Note of the Week at p. 49, *ante*, came before the Divisional Court when it dismissed an appeal by the York city council from a decision of the recorder of York dismissing an appeal by the council from a decision of justices reversing the council's refusal to grant licences to the respondents.

The city council had refused licences on the ground that the premises in question were unsuitable for a slaughter-house because they would cause a nuisance to persons residing in close proximity to them, and that it was not reasonably practicable to render them suitable, because of that proximity.

The Lord Chief Justice, giving judgment dismissing the appeal, said that the only power to refuse a licence was if the premises were not suitable for use as a slaughter-house, and the Act provided in the case of a refusal on the ground of unsuitability for the service of a notice saying what work was to be carried out to render the premises suitable. The council said that they thought that the locality in which the proposed slaughter-houses were situated was not suitable. It did not appear that the Act gave power to refuse on that ground.

London Sessions Probationers' Fund

Reports of probation committees not infrequently refer to their befriending fund, or probationers' fund, which is usually a small fund available for help in cases coming before the courts to meet expenses that cannot be defrayed out of public money. They are among the many examples of the way in which voluntary effort can supplement work done officially.

We have before us the 44th annual report of the committee of the County of London Sessions Probationers' Fund. This important and busy court is not the possessor of a substantial poor box such as is available in the metropolitan magistrates' courts, but generous donations from those poor boxes are given by the magistrates to the London sessions fund.

The report contains more than a statement of accounts and a list of subscribers. There are some interesting observations on the work of the courts. Probation is used freely and successfully. More than 80 *per cent.* of the cases placed on probation at this court two years ago did in fact complete their term of probation satisfactorily. There is again a reference to the disposal of cases committed to the sessions with a view to a sentence of borstal training. "The period spent in custody awaiting their appearance at this court often had a chastening effect upon them and information and offers of constructive assistance which became available after their appearance at the lower court proved very helpful. In 1952, 197 persons were so committed to this court. Of that number it was found possible, after careful inquiry, to place 49 men and five women on probation, with the result that 36 completed their term of probation satisfactorily and two persons (on three-year terms) were continuing satisfactory progress at the end of the year." We do not take this as any reflexion upon the action of the justices who committed the cases to sessions but rather as an illustration of the good results that may sometimes follow a period of detention and time for reflexion. The reduction in crime that has taken place is attributed partly to the operation of the Criminal Justice Act, 1948, which has resulted in the removal from circulation of a number of persistent offenders for a long time, but not less to the success of the work of probation.

The value of the probationers' fund is appreciated most of all in the early part of a period of probation, when it can be used to straighten out the entanglement in which many a probationer has become involved. Some illustrative examples of this fact are given in the report. It is noteworthy that of 150 persons who were assisted by the fund during 1954, only 11 were subsequently convicted of further offences.

American Reports

We have had occasion to mention several times the wealth of judicial decision available in the United States, by reason of the existence side by side of State courts and Federal courts, and the fact that within each State the highest of its own courts is free to follow or to depart from decisions of the same standing in every other State, even where the law is the same on paper. Under this system one difficulty, in following the development of legal doctrine, has been possible discrepancy in the citation of reports. Recognizing this, the Harvard Law Review Association has produced a booklet (now in its ninth edition) called "A Uniform System of Citation," or, popularly, "the blue book." This costs 50 cents, and is obtainable from the Association, whose address is Gannett House, Cambridge 38, Massachusetts. Its main object is to encourage American textbook writers and others to adopt a uniform method of citing American reports, statutes, and other original sources, but it goes further. It suggests rules for such writers to follow when handling English legal material, and also material derived from international legal agencies or foreign countries. Incidentally, it makes suggestions for spelling, italics, grammatical forms, and similar matters in which undue divergence can distract the student. (It is interesting to the English reader to see *Fowler* treated as authoritative.) Several of the abbreviations favoured by the compilers will be unfamiliar, but they decline to admit unauthorized abbreviations and (when dealing with English law and English courts) they generally follow normal English usage—though we find it a little odd to be ourselves cited as "Just. P." In some matters, such as italics, they depart from our own practice, but these are matters of taste—so long as consistency is secured within a particular publication. We have found the booklet interesting in its own right; even if it is not as widely followed as the compilers hope in their own country, it will still be valuable, because it contains, *inter alia*, a list of law reports and legal publications, English as well as American. We are sure it will be helpful to English readers who have to look into the legal literature of the United States, either for purposes of study or in connexion with testamentary or commercial or matrimonial affairs.

English Citations

When reviewing law books, we have frequently contrasted the practices of different publishers, of whom some do and some do not make it a habit to provide full references either in the body of a book or in the table of cases. A learned correspondent who is associated with a leading firm of publishers (which we lately rebuked, for departing in one students' textbook from its own normally irreproachable behaviour in this matter) tells us that the lapse—as we considered it to be—was in accord with suggestions made some three years ago by the Society of Public Teachers of Law. The society is properly concerned about the high cost of books for students. True, there are libraries—not merely the great professional and academic libraries, for those who can have access to them, but excellent selections of law books in some municipal libraries, and also good circulating libraries for students which are maintained by private enterprise. But no student can do all his work with borrowed books; he must have some of

of his own, and their high cost at the present day is a real problem. The society has, therefore, explored several modes of simplifying and standardizing textbooks for the student, and made recommendations to the legal publishers. With most of these recommendations we do not think any tutor (or anybody else) could quarrel, but amongst them was one, that the apparatus of citation could be cut down to a table of cases with no references except to the page of the book itself. We assume that at least one report would be cited there. The inclusion of a full table of cases would (they said) involve an extra cost of about half-a-crown on a book which, without the full table, would be sold at £2. We do not know whether these figures are still to be relied on : we imagine they are near enough. In other words, the difference in cost is roughly between pounds and guineas. If a student has money to buy a personal library costing (say) £10, he will, on the figures given, have to find another 12*s.* 6*d.* We do not decry even a saving of this order ; we certainly do not blame publishers for desiring to help the teacher. But we adhere to our own opinion: no law pupil can be regarded as adequately grounded until he has learnt that cases (and statutes) have to be looked up ; that he will not, once he is in practice, be able safely to rely upon what a textbook says about them. If he is under articles, the office may subscribe to a set of reports which happens to be that cited in the textbook for some important case, or may not. If one alone is cited this will most likely be the *Law Reports*, but, whatever it is, the volume needed is almost sure to be in use by the senior partner at the moment when the articled clerk requires it. A university student can, by taking the necessary steps, probably find any particular report but (here again) those steps may amount to a mile or two between his lodgings and the library. When he has had the experience twice or thrice of getting to the library only to find that the one report he has been told about is in use by another reader, his virtue will pass out of him. He will have been instructed by his tutor that alternative references can be found quite readily by turning to *Halsbury's Laws of England*, or in other ways, but how often will he do this when he is not under supervision? If on the other hand the textbook has given him the names of several reports, he can be fairly certain that one set at least will be available, and his journey will not have been in vain. We have dealt with this topic at some length, because we should not like our correspondent (above mentioned) to suppose we had been captious in our adverse comment. What we said was based on practical experience, with a conviction that the young of the species are affected by inherent human weaknesses which need to be exorcized, if they are to grow into fully competent practitioners.

STRANGE OATHS AND MODERN INSTANCES

By F. J. O. CODDINGTON, *Stipendiary Magistrate*, 1934–1950

Although many witnesses take the oath every day in every court, few of us know all the ins and outs of the law of oaths and perjury*; and very few people are aware of the odd gap in the law through which coaches and horses can be driven, particularly for the benefit of children, with whom the latter part of this article is concerned.

As to adults, every magistrate, if not every schoolboy, knows that a Jew is sworn with his hat on and holding the Old Testament, while a Christian has his hat off and holds the New Testament. But both use the same words. Then there is the Scotsman, who may claim to be sworn in the Scottish manner, though no Scotsman has ever done so in my presence. It would be a rather refreshing change. According to *Archbold*, the Judge (or chairman) and witness face each other, each holding up the right hand, and the witness repeats after the Judge (or chairman) " I swear by Almighty God, as I shall answer to God at the Great Day of Judgment, that I will tell the truth, the whole truth, and nothing but the truth."

Then there is the Chinaman, for whom it is said a plate must be broken, though (alas !) I have never seen a court put to the expense of crockery yet. There is also the Affirmation, originally prescribed for the Quaker or Moravian, but now extended to anybody who objects to being sworn on the ground that he has no religious belief, or that the taking of an oath is contrary to his religious belief. He has to start: " I, . . ., do solemnly, sincerely and truly declare and affirm . . . " followed by the words of the oath " prescribed by law."

With any of these people the oath or affirmation is given in a form which he declares (if the matter is discussed at all) to be binding on his conscience. Otherwise, according to the common law, the precise wording of the oath does not matter. By the Oaths Act, 1888, where an oath has been duly administered and taken, the fact that the person to whom the same was administered had, at the time of taking such oath, no religious belief, shall not for any purpose affect the validity of such oath. And by the Perjury Act, 1911, s. 15, for the purposes of this Act, forms and ceremonies used in administering the oath are immaterial, if the court . . . has power to administer the oath, and an oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection, or has declared to be binding on him: moreover, the expression " oath " includes " affirmation," etc. So that the perjury net is a very wide one, and catches anyone who has gone through the form of taking the oath whether it binds his conscience or not. For these reasons, I have more than once said to a witness who has gabbled the words of the oath with apparent contempt: " What you have said is a promise to God to tell the truth, but if you do not attach much weight to that, I would remind you that it also makes you liable to be punished for perjury if you tell lies."

Omitting from now onwards any complications introduced by Scotsmen, Chinamen, Quakers, and others, let us concentrate on the Christian who swears by holding the New Testament in his right hand and saying certain words. These words must be: " I swear by Almighty God that . . ." followed by the words of the oath " prescribed by law." If " prescribed " means, as most lawyers think it does mean, laid down by some statute or statutory order or rule of court, no such words ever have been prescribed by law, and therefore it is supposed that any form of words undertaking that the evidence shall be true are unobjectionable.

Of course the important things are that the witness should realize that he has a high duty to tell the truth, and that he should be liable to punishment for perjury. For the latter, at any rate, he must be " lawfully sworn." The words suggested as being customary or traditional, by *Archbold*, are " I swear by Almighty

*The statutes dealing with these topics are the Oaths Acts, 1888 and 1909; Perjury Act, 1911; Children and Young Persons Act, 1933 ; Welsh Courts Act, 1942.

God (or I do solemnly, sincerely, and truly declare and affirm) that the evidence I shall give (to the court) (and jury sworn between our Sovereign Lady the Queen and the prisoner at the bar) shall be the truth, the whole truth, and nothing but the truth." *Stone* gives the same words, as before the magistrates, omitting those in the last two brackets, and advises that the once customary conclusion " So help me God " be omitted, and the oath as advised by *Stone* is, I think, the one offered to witnesses in the vast majority of magistrates' courts.

Stone's form of oath is corroborated, though not " prescribed " by the Welsh Courts (Oaths and Interpreters) Rules, 1943, made under the Welsh Courts Act, 1942, s. 1, which prescribes for the Welshman a translation of the alleged English form, " I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth." (*See* the schedule.)

I am by no means certain that all the subliterate and foolish adults who take the customary oath in England have any clear and precise understanding as to what it means. But, at any rate, the court is not bound to inquire into this !

The position is different in the case of a child of tender years. Here the court, that is the chairman, must question the child in open court until satisfied that the child does understand the nature of the oath, and only if so satisfied, does he allow the child to take the oath. Anyone who has conscientiously gone through the difficult and delicate procedure of so questioning a child must realize how hard it is to satisfy oneself on this topic. Neither parent nor police seem to think of preparing the child. The first hurdle is the word " swear." A child probably thinks that " swear " refers to " bad language," and it has to be explained that " swear by God " means " promise to God." When this has been grasped, and it is not easy to the childish mind, the next hurdle is the word " evidence," usually pronounced " edivence." When the child appears to have finally grasped the meaning of these two words, and the implication of the whole long sentence, and has also appreciated that it is the Bible which is being held, and that the promise is made not to the court but to God, and upon the Bible, the child can be sworn, and not before. Sometimes it is a lengthy process; sometimes the difficulties are insuperable.

I have spoken of a coach and horses, and of that gap in the law that the only words prescribed are " I swear by Almighty God that. . . ." It has now occurred to some bright innovator in London to make use of the lack of prescription and to simplify the oath for the benefit of the child. In some metropolitan juvenile courts the simplified form of oath taken is said to be " I swear by Almighty God to tell the court the truth, the whole truth, and nothing but the truth." It is a very good idea to cut out the word " evidence " which gives so much trouble, but on the other hand, this simplified oath introduces two difficulties. The one is the technicality that the prescribed word " that " is omitted: the oath should begin " I swear by Almighty God that. . . ." And secondly, the new difficult word " court " is introduced. Surely for many a child the word " court " conjures up a picture of an area or of a play-yard, or at best of a room—not of the magistrates on the bench, which is the meaning intended here. So I would suggest that at least the oath should be improved by the insertion of " that " and the omission of " court," to run " I swear by Almighty God (on the Bible)† that I will tell the truth, the whole truth, and nothing but the truth." But need we have even this?

When I was a child, if a grown-up impressively told me to " think " or " to be sure not to forget " or used some other emphatic phrase, the result was to make my mind go absolutely blank; and therefore I am not at all sure whether the treble repetition "the truth, the whole truth, and nothing but the truth" might not similarly upset the mind of a child and defeat its own object. Therefore I would suggest as the best available oath for a child, " I swear by Almighty God that I will tell the truth."

Of course it would be better if one could alter that to " I promise Almighty God . . ." or even " I vow . . ." though that is perhaps an unusual word. And omit " Almighty," which conveys little meaning to a child. The ideal oath, I submit, would be "I promise God (on the Bible)†, to tell the truth." But as the law now stands that cannot be done.

As everybody knows, if a child cannot understand the meaning of an oath, she (or he, but usually she !) is permitted to give her evidence not on oath, provided that she understands the duty of speaking the truth. This very often happens, but it carries with it the statutory necessity that such evidence must be corroborated in a material particular implicating the accused. If such a child deliberately tells untruths, she may be punished for the offence, which, however, is not named perjury (*see* Children and Young Persons Act, 1933, s. 38): but anyone prosecuting a tenderager for telling lies must have little understanding of the fantasies of childhood.

As a postscript, I may add that the only words which have in a sense been " prescribed," in that they were laid down by the present Lord Chief Justice, are to be found in *R.* v. *Butterwasser* [1947] 2 All E.R. 415; 111 J.P. 527, where he said that a witness giving the "biography" of a defendant after conviction, should be sworn upon the "*voire dire*" which should run "I swear by Almighty God that I will true answer make to all such questions as the court may demand of me," because, he implied, this oath permits the repetition of hearsay—but, he added, if the prisoner denies any hearsay statement, the court will demand strict proof or ignore it.

† If preferred " on the Bible " could be omitted.

ADDITIONS TO COMMISSIONS

SHEFFIELD CITY

Richard Ronald Brown, 400, Eccleshall Road South, Sheffield 11.
James Ernest Cockayne, 20, Dore Road, Sheffield.
Jack Cohen, High Wray, Millhouses Lane, Sheffield 11.
Lionel Stephen Edward Farris, 55, Whiteley Wood Road, Sheffield 11.
Geoffrey Mainprize Flather, The Friary, Tickhill, Doncaster.
Alastair Cameron Fouldis, 95, Nicholson Road, Sheffield 8.
William Jenkins Gibson, 71, Banner Cross Road, Sheffield 11.
Lt.-Col. Robert Gray, M.B.E., 20, Whiteley Wood Road, Sheffield.
Col. George Vivian Hunt, O.B.E., T.D., Gilleyfield Farm, Dore, Sheffield.
Roger Inman, O.B.E., 228, Graham Road, Sheffield 11.
Robert Jardine, 58, Whirlow Lane, Sheffield 11.
Arnold Laver, 84, Dore Road, Sheffield.
Dr. Mary Leslie, 79, Ranmoor Road, Sheffield 10.
Herman Roderick Lindars, 274, Fulwood Road, Sheffield 10.
William George Pallett, 44, Ranmoor Cliffe Road, Sheffield 10.
John Pate, 149, Archer Road, Sheffield 8.
Herbert Redgate, 68, Woolley Wood Road, Sheffield 5.
Mrs. Patience Sheard, 259, Abbeydale Road South, Dore, Sheffield.
William Holyland Simmons, 3, Oaks Fold, Sheffield 5.
William Edward Stead, 91, Little Norton Lane, Sheffield 8.
Eric Stephenson, 139, Sturge Street, Heeley, Sheffield 2.
Miss Pauline Evelyn Timmins, 6, Sunbury Court, Westbourne Road, Sheffield 10.

SURREY COUNTY

Barry Robinson, Hothfield, Russells Crescent, Horley.
John Niedieck Savory, M.B.E., T.D., The Knoll, Guildford Road, Chertsey.
Mrs. Marion Wilson Thompson, Sheywood, Old Woking Road, Maybury, Woking.
Miss Mary Cecil Wardle, Little Yews, Bagshot.
Douglas Selborne Whitehouse, 3, Parkside Gardens, Wimbledon Common, S.W.19.
Henry James Wicks, 36, Marlpit Lane, Coulsdon.
Kingsley Williams, 20, Devonshire Road, Sutton.

DISTRESS WARRANTS FOR RATES—COSTS AND CHARGES

[CONTRIBUTED]

For many years, distress warrants granted to local authorities in respect of arrears of rates have, in most places, been executed by the police. With the object of saving police time, local authorities are now being asked to make their own arrangements for the execution of such warrants, and the question arises what costs and charges they would be entitled to recover for the distress.

The first costs incurred by a local authority when it applies for a distress warrant are the court costs. They are prescribed in sch. 4 to the Magistrates' Courts Act, 1952, and are as follows:

RATE:	*s.*	*d.*
Enforcement of any rate, to include complaint, summons and all other proceedings for which separate fees are not provided hereunder	2	0
Order	2	0
Warrant of Distress	2	0
Commitment	2	0
If more than one rate is included in the summons, for each rate after the first		6
When the form of warrant provided for by s. 3 of the Distress for Rates Act, 1849, is used, for each name inserted in the schedule over and above eight		3

The above fees must be paid by the rating authority, in the first place.

The Poor Rates Recovery Act, 1862, contemplates that the proceedings in respect of a number of rates, due from the same person, shall all be included in the same information, summons, order and warrant and it is provided that no costs shall be allowed in respect of several where one would, in the opinion of the justices, have sufficed. The Act of 1862 does not direct that where a local authority is proceeding against a number of defendants for arrears of rates, only one summons, order, and warrant shall be used, but s. 3 of the Distress for Rates Act, 1849, provides that one warrant can be issued against any number of persons failing to pay the rate. When this is done court costs are reduced, as a reference to the above list of costs will show.

Section 1 of the Act of 1849 enables "reasonable" costs to be awarded in warrants of distress for rates and provides that there shall be levied the "reasonable" charges of taking, keeping, and selling the distress. The justices have a discretion as to whether they will award costs and, where a person who has been summoned for a rate has paid it but not the costs, they can refuse to issue a distress warrant for the costs alone. When costs are allowed, they will be specifically mentioned in the warrant of distress.

The charges of levying the distress are regulated by the schedule to the Distress (Costs) Act, 1817, as applied by the Distress (Costs) Act, 1827. The schedule to the Act of 1817 contains a list of charges which may be made where the distress for rates does not exceed £20. Where the arrears distrained for exceeds £20, it is believed to be customary to charge in accordance with scale II of appendix I of the Distress for Rent Rules, 1953, S.I. 1953, No. 1702, though, as a matter of law, these rules apply to rent alone.

The costs and charges fixed by the schedule to the Act of 1817 were superseded in the case of distress for rent by those specified by the Distress for Rent Rules, 1920, which rules were made under the Law of Distress Amendment Act, 1888, and have themselves now been replaced by the Distress for Rent Rules, 1953, just mentioned. These rules have not been applied to distress for rates, except by the custom above referred to in certain cases. If the arrears do not exceed £20, the Act of 1817 is still applicable.

By s. 31 of the Divided Parishes and Poor Law Amendment Act, 1876, where a warrant of distress is issued for recovery of a rate, the person against whom it is issued is liable to pay the cost of the warrant and the charges of the broker or other officer for his attendance to make the levy, although such person may tender the amount of the rate before any levy is made.

It should be noted that no statute requires an appraisement when a distress is levied for arrears of rates. The Poor Relief Act, 1601, which created the right of distress and sale for rates, provided merely "That it shall be lawful . . . to levy the said sums . . . by distress and sale of the offender's goods." A bailiff or other officer levying a distress for rates will not, therefore, be entitled to charge for an appraisement.

If, upon the levying of a distress for rates not exceeding £20, a larger amount is taken for charges than is authorized, the aggrieved person may apply to a justice of the peace for redress. The justices may order and adjudge treble the amount of the moneys unlawfully taken to be paid to the party aggrieved by the person or persons who took them, together with the full costs incurred by the former (s. 2, Distress (Costs) Act, 1817, as extended to other forms of distress by the Distress (Costs) Act, 1827). Such an order is now enforceable by virtue of ss. 64 and 67 of the Magistrates' Courts Act, 1952: *R.* v. *Daly, ex parte Newson* (1911) 75 J.P. 333. Alternatively, an action will lie in the county court: *R.* v. *Philbrick, ex parte Edwards* (1905) 69 J.P. 221. It is a valid defence in proceedings before the magistrates that charges were *bona fide* believed to have been necessarily incurred (*Nott* v. *Bound* (1866) 14 L.T. 330). When the distress is for an amount in excess of £20, the remedy of an aggrieved person will be an action in the county court.

Many local authorities already employ a bailiff, to whom the execution of distress warrants for rates is entrusted, and no doubt others will now seek the services of registered bailiffs to execute distress warrants granted in their favour.

With regard to water rates, rents, or charges, if the undertakers by whom the water is supplied are also a rating authority they will often be empowered by local Act to recover water rates, rents, or charges in the same manner as general rates. The costs and charges of obtaining and executing a distress warrant will, in such cases, be the same as if the warrant related to general rates.

In the absence of private Act powers, the recovery of water rates by statutory water undertakers is governed by s. 38 and other sections of the Water Act, 1945. A water rate may be recovered either summarily as a civil debt or as a simple contract debt in any court of competent jurisdiction.

If summary proceedings are taken, the civil debt procedure of the Magistrates' Courts Act, 1952, applies. The undertakers will obtain an order for payment, which may be enforced either by distress warrant or committal to prison under s. 64 of that Act. Section 66 (5) of the Act provides that if any person charged with the execution of a warrant of distress wilfully retains from the proceeds of a sale of the goods on which distress is levied, or otherwise exacts, any greater costs and charges than those properly payable, or makes any improper charge, he shall be liable, on summary conviction, to a fine not exceeding £5. An aggrieved person would alternatively have a right of action in the county court. It is submitted that only the same charges may be taken by the person levying distress for water rates under the Magistrates' Courts Act, 1952, as may be taken by a person levying distress for arrears of general rates.

PAY DIFFERENTIALS

Adequate and just pay differentials must be maintained. So, at any rate, we have been told many times by bodies and persons eminent in various fields of human endeavour in this country.

The late Mr. Arthur Deakin, who was the general secretary of the giant Transport and General Workers' Union, wrote in 1949 about the importance of maintaining differentials. He said that their destruction could only mean chaos and confusion and would cause bitter resentment among the workers. Recent wage disputes in the newspaper and railway worlds have made it only too clear how right he was.

In 1949 there was published the report of the Chorley Committee on Higher Civil Service Remuneration (cmd. 7635) which said that " pay should not be at a level which gives senior civil servants a markedly lower standard of living than those of comparable status in other employments: and this, we feel, is what has been happening in recent years." The Chorley approved recommendation gave permanent secretaries, for example, an increase of 50 *per cent.* of gross pay over the 1938/39 figure, but this was not adequate to achieve that level of pay which the committee thought necessary. The effect of the increase is that their real incomes, after taking account of direct taxation and the purchasing power of the pound, are now worth (for the average family man) about one-half of what they were in 1939—and their standard of living has gone down accordingly. On the other hand a man engaged in directing commercial operations of anything approaching the magnitude and complexity of those for which the chief officer of a government department is responsible will receive cash remuneration (and probably other emoluments in addition) which make the permanent secretary's salary look small indeed.

In his statement to the stockholders of Barclays Bank D.C.O., on the report and accounts for the year ended September 30, 1954, the chairman, Mr. J. S. Crossley, said: " The view is, I believe, widely held both within the trade unions and outside them, that in many trades and industries the gap between the effective pay of skilled and unskilled employees is too narrow, and that this makes for inefficient output and poor standards of workmanship. The present trend of our fiscal policy seems, however, to accentuate this very weakness by weighting the scales, ever more heavily, against the more enterprising worker as he climbs the ladder. And if, notwithstanding these discouragements, he should succeed in being promoted to a position of high executive responsibility, he will be faced in addition with the obligation of paying surtax, a tax which itself is so steeply graded that it must seem to many hardly worth while making the extra effort to merit further promotion."

When bank chairmen and trade union leaders agree that a principle of remuneration is sound and should be operated we may well feel that there should be no hesitation or delay in applying it.

But it is not only in the fields of commerce and industry that the question has been considered: disquiet about pay ratios and methods of awarding increases is felt in local government itself. Thus in 1954 the East Suffolk county council protested to the County Councils Association about the flat increases of £50 a year given in 1951 to all officers in A.P.T. grades I-VIII, and the flat increases of £25 a year given in 1952 and again in 1954 to all officers in the A.P.T. grades I-X inclusive. The county council contended that such action largely removed the essential salary differentials carefully established when officers were graded under the National Scheme of Conditions of Service. These representations were forwarded by the County Councils Association to the employers' sides of the National Joint Council and of the Joint Negotiating Committee for Chief Officers.

It is also true that certain local authorities had for some time ignored the national scales and applied those of their own devising which included better differentials: this procedure was forced upon them because of the large numbers of staff deserting local government for other more remunerative work.

All these views, representations and actions may have had some effect on local government negotiators. The new " Charter " scales operative from January 1 last, do not give increases proportionate to previously existing salaries and their effect is uneven and, in certain cases, unfair. They do represent, however, a new outlook: they have escaped from the fetish of the uniform flat rate increase, have reduced from 11 to seven the number of A.P.T. grades, have lengthened the revised grades and increased the annual increments within them.

The recent award to chief constables has been graduated to some extent according to existing pay but the percentage increases as shown in the sub-joined table are difficult to understand: why, for example, should the chief on a former maximum of £1,500 get a rise proportionately smaller than the men on grades above and below him ? We look at the amounts awarded and think how much simpler and fairer a uniform percentage increase would have been.

CHIEF CONSTABLES

Maxima of Scale		*Increases in Salary*	*Percentage on Maxima*
Present	*Future*		
£	£	£	%
1,000	1,100	100	10
1,150	1,250	100	8·7
1,350	1,450	100	7·4
1,500	1,600	100	6·7
1,650	1,800	150	9·1
1,750	1,900	150	8·6
1,900	2,050	150	7·9
2,050	2,250	200	9·8
2,250	2,450	200	8·9
2,450	2,650	200	8·2
2,650	2,900	250	9·4
2,850	3,100	250	8·8

The recent award to medical officers of health gives the following increases, and again we have calculated the respective percentages.

MEDICAL OFFICERS

Population Group Not exceeding	*Maxima of Maximum Scale*		*Increase*	
	Present	*Future*	*Amount*	*Percentage*
	£	£	£	%
75,000	1,850	2,040	190	10·3
100,000	2,100	2,297	197	9·4
150,000	2,300	2,507	207	9·0
250,000	2,500	2,700	200	8·0
400,000	2,750	2,950	200	7·3
600,000	3,000	3,200	200	6·7

Lastly the following table shows in similar fashion the effect of the recent agreement on salary increases for those officers within the purview of Scales A-I of the Joint Negotiating Committee for Chief Officers of Local Authorities.

	Maxima of Scales		*Increases*	
	Pre 1955	*From* 1.1.55	*Amount*	*Percentage*
	£	£ s.	£ s.	%
A	1,075	1,228 15	153 15	14·3
B	1,150	1,307 10	157 10	13·7
C	1,250	1,412 10	162 10	13·0
D	1,350	1,517 10	167 10	12·4
E	1,450	1,622 10	172 10	11·9
F	1,600	1,780 0	180 0	11·3
G	1,750	1,937 10	187 10	10·7
H	1,900	2,095 0	195 0	10·3
I	2,000	2,200 0	200 0	10·0

These awards and agreements are broadly similar on one vital point—namely that once a man's earnings exceed a paper salary of £2,000 or thereabouts, no differentiation of increases can be made. The convincing argument for this treatment we have yet to discover: all we have learned at present is that local authorities contend that the principle of diminishing increases as salary scales rise applied in 1939 and earlier and presumably must in their view always apply in the future. In urging its point have they really considered the burden of present day taxation as compared with the 1939 impost ? We have prepared two tables which illustrate what seem to us vital points of comparison: Table A shows the increases of pay with percentages given since 1939 to various classes of employees, and Table B the extent to which each of these classes is better or worse off than in 1939 in terms of real income.

TABLE A—COMPARISON OF PRE-WAR AND PRESENT NET INCOMES

Class of Worker	*Weekly Rate of Pay—Sept.* 1939	*Income Tax*	*Net Income*	*Weekly Rate of Pay—April*, 1955	*Income Tax*	*Net Income*	*Percentage Increase*
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	%
SECTION 1—LOWER AND MIDDLE GRADES							
Roadman	2 9 0	———	2 9 0	6 15 2	———	6 15 2	176
Ambulance driver	3 4 0	———	3 4 0	7 12 0	———	7 12 0	138
Building trade craftsman	3 11 6	———	3 11 6	9 9 0	———	9 9 0	164
Building trade labourer	2 14 1	———	2 14 1	8 3 5	———	8 3 5	202
	Annual Rate			*Annual Rate*			
	£	£	£	£	£	£	
Police constable (man)	286	—	286	607	1	606	112
Clerk (man)—General	135	—	135	350	—	350	159
Clerk (man)—Clerical	245	—	245	505	—	505	106
Teacher (man)	276	—	276	594	2	592	114
Midwife (single woman)	170	3	167	470	48	422	153
SECTION 2—SENIOR GRADES*							
Chief Officers paid on Joint Negotiating Committee Scales							
(*a*) Medium authority	1,400	255	1,145	2,700	784	1,916	67
(*b*) Large authority	1,500	283	1,217	3,200	1,069	2,131	75
Chief Constables	1,532	285	1,247	2,629	719	1,910	53
Police Superintendents	623	35	588	1,191†	133	1,058	80
Chief Clerks of Departments	600	30	570	1,100	117	983	72

* Typical individual examples are given. † Grade 1

TABLE B—COMPARISON OF PRE-WAR AND PRESENT EFFECTIVE NET INCOMES

	1939	1955		1955 Compared with 1939	
	Net Income	*Net Income*	*Equivalent Purchasing Power*	*Surplus (+) or Deficiency (—)*	*Percentage Difference*
CLASS OF WORKER	(*weekly*) £ s. d.	(*weekly*) £ s. d.	(*weekly*) £ s. d.	(*annual*) £	%
SECTION I					
Roadman	2 9 0	6 15 2	2 18 9	+ 25	+ 20
Ambulance driver	3 4 0	7 12 0	3 6 1	+ 5	+ 3
Building trade craftsman	3 11 6	9 9 0	4 2 2	+ 28	+ 15
Building trade labourer	2 14 1	8 3 5	3 11 1	+ 44	+ 31
	(*annual*—£)	(*annual*—£)	(*annual*—£)		
Police constable (man)	286	606	263	— 23	— 8
Clerk (man)—General	135	350	152	+ 17	+ 13
Clerk (man)—Clerical	245	505	220	— 25	— 10
Teacher (man)	276	592	257	— 19	— 7
Midwife (single woman)	167	422	183	+ 16	+ 10
SECTION II					
Chief Officer—medium authority	1,145	1,916	833	— 312	— 27
Chief Officer—large authority	1,217	2,131	927	— 290	— 24
Chief constable	1,247	1,910	830	— 417	— 33
Police Superintendent	588	1,058	460	— 128	— 22
Chief Clerk	570	983	427	— 143	— 25

NOTE:—The above net incomes are basic amounts.

Many of the workers named in Section 1 receive overtime payments for hours worked in excess of the basic standard, and this fact would increase net incomes. For example, in one local authority, the average weekly income of ambulance drivers is £9 5*s.* 0*d.* and in this case the surplus of net effective income in 1955 compared with 1939 is much in excess of the £5 per annum quoted in the penultimate column.

In making comparisons of the figures given the important point must not be overlooked that the value of social services is not included. These services represent a considerable part of real incomes, more particularly in the lower and middle grades, and add substantially to the recorded disadvantage of the senior officers. Similarly no account is taken of the value of a shortened working week for certain of the junior classes.

We believe that a realization of the defects of flat rate increases is beginning to penetrate to important places, aided by public pronouncements of bodies such as East Suffolk county council, but as we have indicated it is still argued by employers' sides that pay must always rise proportionately less in the higher grades. We repeat our confession of failure to find an equitable principle in this proposition: we should have thought it the good employer's duty to pay fair remuneration for any job, one of the determining factors in fixing such remuneration being the maintenance of proper differentials. Any levelling of incomes is a matter for the Government through taxation, not the duty of the employer. Table B does show clearly how this levelling takes place and also how much the position of the senior man has deteriorated. Continuance of the tapering idea in the future with further relative worsening of the position of these officers will have serious effects, although admittedly these effects may not be immediate because present holders of such posts will not readily desert their authorities. Nevertheless they well know the exacting and responsible character of their jobs—the long professional training necessary in the past and the long working hours necessary in the present—and if they foresee a continuance of the present situation where beyond a certain point differentials are not recognized, although loyalty may keep them at their posts it is obvious that their influence will be exerted to directing the younger generation into other fields where incentive obtains and the responsibility taker, the brain worker, and the man with initiative and ideas are encouraged and rewarded. This influence, in fact, is already operating: the effect upon local government standards of the future may be grave.

We conclude with other words of Mr. J. S. Crossley in his aforementioned statement: "I find it difficult, in any case, to see much logic in a system which rewards meritorious service with one hand and removes the reward with the other in such wholesale fashion. Perhaps in the high and far off times a gross income of £2,000 may have represented great affluence and may have been enjoyed almost exclusively by the idle rich. If so, it is hardly the case today and if, as we must surely hope, we are to enjoy the benefits of an expanding economy, then, as each year goes by, many more thousands of men will presumably enter this category."

LIABILITY FOR THE COST OF MOVING THE APPARATUS OF PUBLIC UTILITIES IN HIGHWAYS

[CONTRIBUTED]

On the occasion of the opening of the last session of Parliament, Her Majesty the Queen said: "My Ministers are greatly concerned at the grievous toll in death and injury that is taken by road accidents, at the inadequacy of our highway system for the ever-increasing volume of traffic, and at the damage done to our national economy by traffic congestion and delays. My Ministers have accordingly decided to embark upon an expanded programme of road construction and improvement, designed both to increase safety on the roads and to promote the freer flow of traffic. The Road Traffic Acts will also be amended to further these aims." In the debate on the address Sir Anthony Eden said that the Government plans for modernizing the roads would cost £45,000,000 a year—more than three times the maximum annual sum previously allotted. The Government was determined to bring to an end "the period of almost complete standstill" on road modernization which had prevailed since the war. He said: "We propose to authorize major improvements and construction schemes at an increased rate." The expenditure on major road improvement and new road construction was separate from the additional expenditure on the maintenance of roads and on minor improvements, which now cost £30,000 a year.

It is apparent therefore that the increasing congestion of the roads of this country, and the problem of parking facilities for motor vehicles in large cities, will require large road works to be carried out by many highway authorites in the near future. In addition, the housing programme and the redevelopment schemes of local authorities will also cause the construction of new roads or the diversion of existing ones.

Since about the middle of the last century Parliament has authorized essential services such as gas, water, electricity, and telephones, to be conveyed or transmitted to the public by laying the necessary mains and apparatus in the highway. Wherever heavily populated areas exist, therefore, any alteration to or interference with the highway may affect the apparatus of statutory undertakers. In addition, the apparatus of statutory undertakers laid in a street may obstruct or interfere with the right of access to the highway by the owner of the abutting property. The question which arises in these cases is whether the statutory undertakers on the one hand or the highway authority, local authority, or private owner on the other hand, are liable to pay for the cost of removing or altering the position of the undertakers' apparatus. In considering this matter it is necessary to appreciate the area and depth of land below the surface of the highway which is vested in the highway authority, as it is submitted that this, in effect, prescribes a limit of ground in which undertakers have a statutory right to lay their mains and apparatus. The material statutory provisions regarding the vesting of highways in urban authorities and county councils are contained in s. 149 of the Public Health Act, 1875, and s. 29 of the Local Government Act, 1929.

The cases of *Rolls* v. *Vestry of St. George the Martyr, Southwark* (1880) 44 J.P. 680; *Foley's Charity Trustees* v. *Dudley Corporation* (1910) 74 J.P. 41, and *Tithe Redemption Commission* v. *Runcorn Urban District Council and Another* [1954] 1 All E.R. 653; 118 J.P. 265, decided that the vesting of a street under s. 149 of the Public Health Act, 1875, or s. 29 of the Local Government Act, 1929, vests in the highway authority such property only as is necessary for the control, protection, and maintenance of the street as a highway for public use. In *Tunbridge Wells Corporation* v. *Baird* (1896) 60 J.P. 788, Lord Macnaghten described the highway authority's interest as a statutory right in the nature of a right of property in the roadway. This right was further defined in the *Runcorn* case by Denning, L.J., who said: "The statute of 1929 vested in the local authority the top spit, or, perhaps I should say, the top

two spits, of the road for a legal estate in fee simple determinable in the event of its ceasing to be a public highway."

In *Rolls* v. *Vestry of St. George the Martyr, Southwark, supra*, Sir Herbert Cozens-Hardy, M.R., said: "It is, to my mind, not open to this Court to question that road authorities in the position of the defendants have a property in and possession of the surface of the road, and of and in an undefined depth below the surface, and have also a property in an undefined section of the air above, so far in each case as is necessary for the discharge of their duties."

In *Foley's Charity Trustees* v. *Dudley Corporation, supra*, Fletcher Moulton, L.J., further defined this right when he said: "Therefore the defendants have this property in the land in question. It certainly includes the surface, and it includes so much as is necessary to support the surface as a road."

The soil or earth below the surface of the highway and so much as is necessary to support the surface vests in the owners of the land which adjoins the highway.

It is submitted that statutory undertakers in exercising their rights to break up the crust or surface of the highway and so much as is necessary to support it are not thereby obtaining a wayleave or easement from the authority responsible for the maintenance of the highway, although they may be deemed to have been granted a wayleave or easement by operation of law against the adjoining owner of the subsoil. The position is, however, different where for the purpose of making a trunk road, a virgin road, or a diversion of a road, the highway authority purchase land and also become owners of the subsoil. The laying of apparatus in highways without statutory authority would, however, be a trespass on the subsoil of the highway and also an unauthorized interference with the highway. The effect of such Acts as the Waterworks Clauses Act, 1847, and the Gasworks Clauses Act, 1847, is that the laying of apparatus is not a trespass on the rights of the owner of the soil under the highway, and is not an unauthorized interference with the surface of the highway.

LIABILITY FOR PAYMENT BEFORE THE PUBLIC UTILITIES STREET WORKS ACT, 1950, CAME INTO FORCE

Having determined the area of land in which the statutory undertakers can exercise their statutory rights to execute works in highways, it must be ascertained whether or not the promoting authority's works are within any of the classes of work specified in s. 21 of the Public Utilities Street Works Act, 1950. If they are not within s. 21, then the responsibility of the promoting authority (if any) for the cost of removing or altering them may be governed by the provisions of either ss. 149 and 153 of the Public Health Act, 1875, or of one or more of the statutory provisions set out in sch. 5 to the Public Utilities Street Works Act, 1950, which were modified in consequence of the coming into operation of part II of the Public Utilities Street Works Act, 1950, or, in addition, the provisions of s. 49 (4) of the Housing Act, 1936, which is considered in greater detail in a later part of this article. The material parts of ss. 149 and 153 of the Public Health Act, 1875, are as follows:

"149. All streets, being or which at any time become highways repairable by the inhabitants at large within any urban district, and the pavement stones and other materials thereof, and all buildings implements and other things provided for the purposes thereof, shall vest in and be under the control of the urban authority.

The urban authority shall from time to time cause all such streets to be levelled paved metalled flagged channelled altered and repaired as occasion may require; they may from time to time cause the soil of any such street to be raised lowered or altered as they think fit, and may place and keep in repair fences and posts for the safety of foot passengers."

"153. Where for any purpose of this Act any urban authority deem it necessary to raise sink or otherwise alter the situation of any water or gas pipes mains plugs or other waterworks or gasworks laid in or under any street, they may by notice in writing require the owner of the pipes mains plugs or works to raise sink or otherwise alter the situation of the same in such manner and within such reasonable time as is specified in the notice; the expenses of or connected with any such alteration shall be paid by the urban authority; and if such notice is not complied with the urban authority may themselves make the alteration required:

Provided—

That no such alteration shall be required or made which will permanently injure any such pipes mains plugs or works or prevent the water or gas from flowing as freely and conveniently as usual; and

That where under any local Act of Parliament the expenses of or connected with the raising sinking or otherwise altering the situation of any water or gas pipes mains plugs or other waterworks or gasworks, are directed to be borne by the owner of such pipes or works, his liability in that respect shall continue in the same manner and under the same conditions in all respects as if this Act had not been passed."

In *Southwark and Vauxhall Water Company* v. *Wandsworth District Board of Works* (1898) 62 J.P. 756, a water company in exercise of its statutory powers laid down pipes and mains under the surface of a street at depths in some places varying from 1 *ft.* 10 *in.* to 1 *ft.* 4 *in.* The highway authority of the district afterwards, in exercise of the power in that behalf given by s. 98 of the Metropolis Management Act, 1855 (which contains provisions corresponding to ss. 149 and 153 of the Public Health Act, 1875), proposed to lower the surface of the street in such a manner that, although the water company's pipes and mains would not be touched, and their position would neither be altered nor disturbed, the depth of soil above them would be reduced to a few inches only, so that in one place these pipes or mains would only be 3 *in.*, and in another only 2 *in.*, below the new surface. The plaintiffs' case was that, if the surface of the streets and footways in question was lowered in the proposed manner, their pipes and mains would be exposed to the action of frost, and the water in them would be in danger of being frozen during a portion of their length; but the defendants maintained that they were acting within their rights, and that if the plaintiffs' pipes and mains, for their protection from frost or otherwise, now required lowering, the plaintiffs, who had not in the first instance placed them at a proper depth, must lower them at their own expense. The plaintiffs accordingly applied for an injunction to restrain the highway authority from lowering the surface of the street, without at the same time lowering the pipes of the company to a corresponding depth under the new surface.

It was held by the Court of Appeal that s. 98 of the Metropolis Management Act, 1855, did not impose upon the highway authority, when exercising the power thereby given to them of altering the level of a street, any express or implied duty to exercise also at their own expense the power by the same section given of altering the position of the pipes thereunder, for the benefit of the water company, in a case where the highway authority did not require for their own purposes to interfere with such pipes. Section 98 of the Metropolis Management Act, 1855, enacts as follows:

"It shall be lawful for every vestry and district board from time to time to cause all or any of the streets within their

parish or district, or any part thereof respectively, to be paved or repaired when and as often and in such form and manner and with such materials as such vestry or board think fit, and to cause the ground or soil thereof to be raised or lowered, and the course of the channels running in, into, or through the same to be turned or altered, in such manner as they think proper, and to alter the position of any mains or pipes in or under such street, such alteration to be made subject to the approval of the engineer of the company to which such mains or pipes belong."

In the *Southwark* case, Lindley, M.R., expressed the following views on the extent of the highway authority's obligations to alter the position of the statutory undertakers' apparatus where works are being carried out under s. 98 of the Metropolis Management Act, 1855, and it is submitted these principles are also equally applicable to other statutes which are *in pari materia* such as ss. 149 and 153 of the Public Health Act, 1875:

" Underlying the plaintiffs' contention is the assumption that they are entitled to have a certain amount of soil over their pipes. I can find no warrant for this assumption; and as the defendants are clearly empowered by s. 98 to remove the soil above the pipes, I see no ground for saying that the additional power conferred upon them of lowering the plaintiffs' pipes imposes the duty of lowering them in order to protect them from injury. The plaintiffs pay nothing for the privilege of laying their pipes down in a public path or road, and they run the risk of having the surface made higher or lower by the road authorities under their statutory powers.

This conclusion is strengthened by s. 61 of the Towns Improvement Clauses Act, 1847, which is *in pari materia*, and which empowers the improvement commissioners to raise or lower pipes " if they deem it necessary " so to do. No duty to do so is cast upon them. Section 98 of the Metropolis Management Act, although not quite so clearly worded, has, in my opinion, the same meaning."

It was also contended in the *Southwark* case that the highway authority were under a common law duty so to use their statutory powers as not to injure their neighbours. Collins, L.J., in dealing with the application of the principle that if a statutory body exercises a power it must be done reasonably and with due regard to the interests of others, said:

" The point urged is that the plaintiffs have suffered damage by the exercise by the defendants of their statutory powers; that the defendants were armed, by the same statute, with other powers which, if used, would have mitigated the damage, and that therefore they were bound to use them. I think it is quite clear, as pointed out by the Master of the Rolls, that the power to move the pipes is merely ancillary to the powers of levelling the highway, and that there is no statutory duty on the defendants to exercise it unless they require it for the performance of their primary obligation. But it is not on the assertion of such a statutory duty that the argument for the defendants' liability is or must be based, but on the broader proposition that being possessed of a power of mitigating damage arising from their proceedings under the statute, they are bound to exercise it. So stated, it is merely an assertion of the proposition so frequently affirmed that, where statutory rights infringe upon what but for the statute would be the rights of other persons, they must be exercised reasonably, so as to do as little mischief as possible. The public are not compelled to suffer inconvenience which is not reasonably incident to the exercise of statutory powers . . . But it must be admitted that the defendants are bound to exercise their statutory powers with reasonable regard for the rights of other persons. I think when it is once clear that the main purpose of the defendants could be completely carried out without recourse to the power of moving the pipes, the obligation of the statutory body must be tried by the same standards of duty as is applicable to private persons. Of course, being merely a creature of statute they cannot exercise powers if the statute has not conferred them; but it does not follow that they are bound to use them because they possess them any more than a private person would be. They merely fall under the general principle *sic utere tuo ut alienum non laedas*.

Here the plaintiffs have no right to any particular thickness of soil above their pipes. They are subordinate in this respect to the duties of the road authority: *see Gas Light and Coke Co.* v. *Vestry of St. Mary Abbotts* (1885) 49 J.P. 469. I think they can have no higher claim to consideration at the hands of the defendants than the owner of a house, for which no right of support from the adjoining house had been acquired, would be entitled to claim against the adjoining owner, who in pulling his own house down withdraws support to which his neighbour is not entitled. I think it is clear in such case that, though the pulling-down owner must be careful to interfere as little as possible with the adjoining house, he is certainly not called upon to take active steps for its protection, as, for instance, by shoring it up. There is a broad distinction between exercising a right with reasonable care so as not to do avoidable damage, and taking active measures to insure the continuance of something that is not a right in the adjoining owner.

. . . . . .

I think the result is that though the person pulling down is bound to do no unnecessary damage, he is not fixed with any obligation to take active steps to mitigate a mischief which follows inevitably upon the reasonable exercise of his own rights."

In the later case of *Roberts* v. *Charing Cross, Euston and Hampstead Railway Company* (1903) 87 L.T. 732, applying *Coats* v. *Clarence Rail Co.* (1830), 1 Russ. & My. 181, it was held that an authority will not be permitted so to alter the level of the street as to cause unnecessary damage for, although there may be a compensation section in the statute, a private individual is not restricted to his right to compensation if the authority exercise their statutory powers unreasonably.

The result of the *Southwark* case was, broadly speaking, that where no physical alteration or removal of undertakers' apparatus was required by the highway authority (even though the result of the highway alterations may leave the apparatus with insufficient cover for protection against surface users), any works required to be done to the apparatus by the undertakers had to be paid for by them. Where, however, the road works inevitably involve the removal of apparatus to a fresh position and not a mere raising or lowering of levels as compared with the road surface, the highway authority must pay the cost. In a nutshell, the position before the coming into force of the Public Utilities Street Works Act, 1950, was that the party who wanted the apparatus moved had to pay for it.

A highway authority may want to alter a road in many different ways. It may, for example, want to widen the road, and what has been the footpath will become part of the carriageway. As the footpath is usually higher, the footpath is taken away; as what was the footpath becomes the carriageway, there is less cover over the apparatus because the surface of the road has become lower. In addition, the apparatus now being in the carriageway and not in the footpath has to stand up to heavy traffic instead of pedestrian traffic, and therefore requires to be lower rather than higher but is, in fact, higher. This is very important to the undertakers, because their main may

be damaged by frost or by a lorry going over it, and the result of the *Southwark* case was that the highway authority were under no obligation to move it. The undertakers, if they wanted to move it, could take it up and move it at their own cost; they could either put it lower down but still under the same strip of ground (now carriageway), or could put it under the new footpath. Again, the highway authority might, by merely altering the level of the road, sink the apparatus deeper than was necessary and therefore increase the cost of making side communications, or take off some of the top soil thereby giving the undertakers insufficient cover. In these circumstances, also, if the undertakers wanted to move the apparatus they must bear the cost. On the other hand, there might be, for instance, a line of overhead cables on a footpath: the highway authority required to widen the road and throw the footpath into the highway; they could not leave the line of overhead cables in their original position and, in fact, did not wish to do so, because it would be disadvantageous to have a line of cables down the carriageway. In these circumstances, the highway authority desired to move the overhead cables and, therefore, they must, in this case, do so at their own expense.

Finally, before considering the changes effected by the coming into force of part II of the Public Utilities Street Works Act, 1950, reference should be made to s. 49 of the Housing Act, 1936, which contains provisions as to the apparatus of statutory undertakers in land dealt with by a local authority under the Housing Acts. Subsection (4) of this section provides as follows:

"Where the removal or alteration of apparatus belonging to statutory undertakers, or the execution of works for the provision of substituted apparatus, whether permanent or temporary, is reasonably necessary for the purposes of their undertaking by reason of the stopping up, diversion, or alteration of the level or width of a street by a local authority under powers exercisable by virtue of this Act, they may, by notice in writing served on the authority, require them at the expense of the authority to remove or alter the apparatus or to execute the works, and where any such requirement is so made and not withdrawn, the local authority shall give effect thereto unless they serve notice in writing on the undertakers of their objection to the requirement within twenty-eight days from the date of service of the notice upon them and the requirement is determined by arbitration to be unreasonable."

Two points should be noted in regard to the provisions of s. 49 (4) of the Housing Act, 1936; first, that the provisions of the Public Utilities Street Works Act, 1950, do not deal with the stopping up of highways, and, secondly, that the provisions of s. 49 (4) regarding the diversion or alteration of the level or width of a street appear to be modified as from October 26, 1951, by virtue of the provisions of s. 24 of the Public Utilities Street Works Act, 1950, and the Public Utilities Street Works Act (Commencement) Order, 1951 (S.I. 1951, No. 1555), with the result that the above-mentioned provisions regarding diversion and alteration are now to be applied, subject to the provisions of part II of the Public Utilities Street Works Act, 1950.

(*To be continued*)

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Sir Raymond Evershed, M.R., Hodson and Parker, L.JJ.)

LAMBE *v.* SECRETARY FOR WAR

April 27, 28, 1955

Compulsory Purchase—Compensation—Basis of assessment—Freehold land—Acquiring authority sitting tenant—"Special suitability or adaptability of the land"—Acquisition of Land (Assessment of Compensation) Act, 1919 (9 *and* 10 *Geo.* 5, *c.* 57), *s.* 2 (2) (3).

CASE STATED by Lands Tribunal.

The claimant was the tenant for life of the freehold interest in certain property which was let to the acquiring authority under a 99 years' lease expiring in 1990. The acquiring authority having served the claimant with a notice to treat relating to his reversionary interest, the question arose which of the three following bases was the right one for assessing the compensation due to the claimant having regard to the rules contained in s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919—(i) applying rr. 2 and 3, what an outsider—not the sitting tenant—would pay for the freehold interest as an investment; or (ii) excluding r. 3, what a sitting tenant, but not the acquiring authority, would pay; (iii) what the acquiring authority in a friendly negotiation would be willing to pay to acquire the interest for its purposes in the absence of any compulsory powers of acquisition.

Held, that the compensation had to be assessed on the basis of the value which the acquiring authority, in a friendly negotiation, would be willing to pay in acquiring the freehold interest for its purposes and as though no compulsory powers of acquisition had been obtained. *Appeal dismissed.*

Counsel: *Wingate-Saul* for the acquiring authority; *Niall MacDermot* for the claimant.

Solicitors: *Treasury Solicitor; Hewitt & Pim*, Reading.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Hallett and Havers, JJ.)

R. *v.* GODALMING LICENSING JUSTICES. *Ex parte* KNIGHT AND ANOTHER

May 2, 1955

Licensing—Licence for term of years held subject to conditions—Desire to surrender and obtain full unrestricted licence—Refusal of justices to hear application.

APPLICATION for order of *mandamus*.

The applicants, Mr. and Mrs. Knight, were the owners of the Thorshill Hotel, Hindhead, in respect of which a licence had been granted for a term of years subject to the condition that there should be no bar on the premises. At a meeting of the Godalming licensing justices the applicants applied for the grant of a full licence, provided that they surrendered the existing licence. The justices were of opinion that they had no jurisdiction to grant an application of this kind and refused it. The applicants obtained leave to apply for an order of *mandamus* directing the justices to hear and determine the application.

Held, that, if a licensee who is the holder of a licence with conditions attached wishes to get rid of those conditions, his proper course is to surrender the licence and apply for a new licence, and, therefore, the case must be remitted to the justices with the direction that they had jurisdiction to consider the application and must hear and determine it according to law.

Counsel: *Harold Brown, Q.C.*, and *Curtis-Raleigh* for the applicants. The respondents did not appear.

Solicitors: *Gibson & Weldon*, for *Burley & Geach*, Petersfield.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Hilbery and Pearce, JJ.)

SMITH *v.* VEEN

April 28, 1955

Shipping—Compulsory pilotage—Home trade ship going elsewhere—Merchant Shipping Act, 1894 (57 *and* 58 *Vict.*, *c.* 60), *s.* 742—*Pilotage Act*, 1913 (2 *and* 3 *Geo.* 5, *c.* 31), *s.* 11 (4).

CASE STATED by Gravesend justices.

At Gravesend magistrates' court three informations were preferred by the appellant, Sydney Rawlings Smith, principal of the Pilotage Department, Trinity House, charging the respondent, Van Der Neen, master of the m.v. Adase, a Dutch ship, with having, on August 27, 1954, in the estuary of the River Thames and within the London pilotage district navigated the ship (not being an excepted ship) between Sheerness and the limit of the London pilotage district in circumstances in which pilotage was compulsory but without being under the pilotage of a licensed pilot after such a pilot had offered to take charge of the ship, contrary to s. 11 (1) and (2) of the Pilotage Act, 1913.

Section 11 (4) of the Pilotage Act, 1913, provides: "A pilotage authority may by byelaw . . . exempt from compulsory pilotage in their district . . . (ii) Home trade ships trading otherwise than coastwise . . ." By s. 742 of the Merchant Shipping Act, 1894, which has to be read together with the Pilotage Act, a home trade ship

includes " every ship employed in trading or going within the following limits; that is to say, the United Kingdom, the Channel Islands, and Isle of Man, and the continent of Europe between the River Elbe and Brest inclusive." The ship was regularly employed within the home trade limits, but, on the particular occasion, she was on a voyage to Oslo, calling at a Dutch port on the way to take in stores. The justices dismissed the informations. The appellant appealed.

Held, that, on the construction of the aforementioned sections, if, though engaged in the home trade, a ship set off on a voyage which was not within the home trade limits, she was bound to carry a pilot, because she was not any longer engaged in the home trade. The appeal must, therefore, be allowed and the case remitted to the justices with a direction to convict.

Counsel: *Naisby, Q.C.*, and *H. E. G. Browning* for the appellant; *Ashton Roskill, Q.C.*, and *B. S. Eckersley* for the respondent.

Solicitors: *Freshfields; Sinclair, Roche & Temperley.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUELCH *v.* PHIPPS

April 28, 1955

Road Traffic—Accident—Duty to report—"Accident owing to presence of motor vehicle on road"—Injury to passenger alighting from moving vehicle—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 22 (1).

CASE STATED by Oxford city justices.

At Oxford city magistrates' court an information was preferred by the appellant, Police-superintendent Quelch, charging the respondent, Harry Dennis Phipps, an omnibus driver, he not having given his name and address to any person having reasonable grounds for so requiring, with not reporting an accident at a police station or to a police constable within 24 hours, contrary to s. 22 (1) of the Road Traffic Act, 1930. That subsection applies where, " owing to the presence of a motor vehicle on a road, an accident occurs whereby damage or injury is caused to any person, vehicle, or animal."

At about 7.30 in the evening of November 14, 1954, the respondent was driving an omnibus in High Street, Oxford. The omnibus slowed down as it approached the junction of Longwall Street because the traffic signals were red, but it did not stop because they changed to green before it was necessary to do so. While the omnibus was crossing the junction a passenger, notwithstanding warnings by the conductor, stepped off the platform and fell forward on the road, injuring his right knee and receiving a bruise and a cut over his right eye. The omnibus stopped at an authorized stopping place at about 60 *yds.* beyond the traffic lights. The conductor then informed the driver of the accident and the conductor walked back and took the passenger home, but did not give him his own or the driver's name, or the number of the omnibus. On November 16 the conductor reported the accident at the Oxford city police station. The driver failed to report the accident at a police station or to a police constable within 24 hours of the occurrence.

The justices were of the opinion that, although in the ordinary meaning of the words this was an accident, and in the widest possible meaning of the words it could be contended that it occurred owing to the presence of the motor vehicle on the road, " accident " within the meaning of the section was an accident involving some kind of collision, and they dismissed the information. The appellant appealed.

Held, that to bring the matter within s. 22 (1) there must be some direct connexion between the motor vehicle and the occurrence of the accident; in the present case it was impossible to say that the accident had not occurred owing to the presence of the motor vehicle on the road; and, therefore, the case must be remitted to the justices with a direction to convict.

Counsel: *Whitworth* for the appellant; *Nicholas* for the respondent.

Solicitors: *Sharpe, Pritchard & Co.*, for *H. J. A. Astley*, Oxford; *Pattinson & Brewer.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 39.

"IN CHARGE OF A CAR." ANOTHER UNSATISFACTORY CASE

A 29 year old boatman was charged at Bristol magistrates' court on March 22 last with being in charge of a vehicle while under the influence of drink contrary to s. 15 of the Road Traffic Act, 1930.

For the prosecution it was stated that at 9.45 *p.m.* on an evening early in March a police constable saw a three-wheel car standing in a street without lights. As he approached the car the constable heard an unusual noise from a nearby bomb site and on investigation found the defendant there swaying and staggering about with his arms in front of him. Defendant told the constable, " It's just one of those things. I'm not going to drive it home, I'm going to walk. I have just taken my girl home." Defendant added that he was looking for his overcoat and wallet. The defendant was taken to a police station and was later seen by a doctor who certified him as being under the influence of drink. Defendant's overcoat, wallet containing £13, and a driving licence, were later found on the bomb site.

For the defendant, who pleaded guilty, it was stated that he had been to a rugger club annual dinner with a girl and had there consumed far more liquor than was good for him. He later drove his girl friend to her home and felt quite well at that time, but later he began to feel ill and realized he was not capable of driving his car. He got out of the car and immobilized it by disconnecting a main lead from the battery to the condenser, and turned off the concealed ignition switch. The police said that they could not start defendant's car and they did not contest that the defendant had; in fact, immobilized it.

Mr. C. D. Griffiths, solicitor, of Bristol, to whom the writer is greatly indebted for this report, and who appeared on behalf of the defendant, urged that defendant's action was that of a very level-headed young man and the fact that he had immobilized the car should weigh with the court and lead them not to disqualify defendant from driving.

The court did not accept this plea and fined defendant £25, and disqualified him from driving for 12 months.

The defendant appealed to quarter sessions but the learned recorder declined to interfere either with the fine or the period of disqualification.

Mr. Griffiths mentions that whereas before the magistrates the prosecution had accepted entirely the defendant's statement that he had no intention whatever of driving and that the vehicle was immobilized, the learned recorder said that he had some doubt in his mind as to whether it was the defendant's real intention to abandon the car and walk home or whether he would, when sufficiently recovered, have attempted to drive it. The recorder's doubt was apparently caused by the fact that defendant admitted that he had remained in the near vicinity of his vehicle for half to three-quarters of an hour after he had immobilized it.

COMMENT

In the existing state of the law the defendant was clearly right to plead guilty to the charge, the Bristol magistrates were justified in imposing the sentence they did, and the recorder was justified in dismissing the appeal against sentence, but in what a sad state is the law!

It will be recalled that the relevant part of s. 15 provides that " any person who . . . when in charge of a motor vehicle on a road or other public place is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle, shall be liable to, etc." It was clearly the intention of Parliament in 1930 that in construing the words " when in charge of a motor vehicle " regard should be had to the evil aimed at, *viz.*, the danger of uncontrolled driving by a person under the influence of drink. Unfortunately, the intention of Parliament has not been followed by the courts of this country and the meaning of the words has been twisted in the course of years until at the present time a situation has been reached in which this particular branch of the law enjoys the well deserved contempt of level-minded and law-abiding citizens.

It is greatly to the credit of Lord Brabazon of Tara and Earl Howe that when the now defunct Road Traffic Bill was before the House of Lords on so many occasions early this year, they did their utmost to clear up the lamentable mess to which judicial decisions had brought s. 15. It will be recalled that Lord Brabazon sought to add a proviso to s. 15 to read " Provided that if on summary proceedings under this section the court, or on proceedings under this section on indictment the jury, are satisfied that the accused, though under the influence of drink or of a drug, had not driven and had no intention of driving or attempting to drive a motor vehicle while under the influence of drink or drugs, he shall not be liable to be convicted of the offence."

A number of illustrations were given by noble Lords of the injustices which had been perpetrated in consequence of the strained meaning attached by the courts to the words " in charge of " and Lord Reid, who intervenes but seldom in the Lords, expressed the

feelings of all right-minded thinking people when he said on March 14 last, " I venture to think that when considering minor offences, or even moderately serious offences, we sometimes do not fully recognize the harm that is done by cases reported in the papers which offend people's sense of justice. I believe that it is much more important that we should make the law a little easy—even a little slipshod if you like—to avoid having cases of that kind, which people talk about and which influence them to a tremendous degree. After all, particularly in this realm, the success of the law depends enormously—indeed almost entirely—on the support of the public. If offences are created which lead to a man being fined, it may be, a considerable sum, and also being disqualified from driving; and if, as a result, people begin to talk and say, " This is just nonsense," it is doing far more harm than if a dozen, or even a hundred, men are let off."

The Lord Chancellor in reply thanked Lord Reid " for the really commonsense speech which he made. It brought us all, I think, back to earth. It is a very serious thing that the law is looked upon with contempt over these particular offences. . . . It is something which has agitated the public mind a good deal because people consider that injustice is being done." The Lord Chancellor went on to point out a matter which he described as " exceedingly mischievous." That is, that if there is no difference between driving when drunk and being drunk in charge when not driving, there is a deliberate incentive to a person to drive when drunk.

The writer has reported the case set out above in full detail because it must surely be ceded that the conviction and penalties imposed upon the defendant in the case reported above, affront one's sense of justice. Indeed, it could rightly be said of the defendant that he had acted as a good citizen in that, realizing the state in which he had got, he deliberately took steps to prevent the risk of endangering pedestrians and other motorists.

According to the report the learned recorder said he thought it possible that the defendant intended to drive home when sufficiently recovered. One is tempted to ask, what is wrong about that?

The truth of the matter surely is that all responsible people are anxious to banish from the roads the wicked person who drives when drunk, but in their anxiety to stamp out this evil from our present-day life the courts have tended to allow themselves to be blinded by the fact that a motorist has had too much to drink and have failed to have regard to actions the motorist may have taken to prevent himself from endangering others. R.L.H.

PENALTIES

West Hartlepool—April, 1955. Selling sausages not of the substance demanded. Fined £5, to pay £2 2*s.* costs. Defendant company made a sausage containing a piece of cloth 4½ *in.* long and 1 *in.* wide. The company was stated to make 4,480,000 sausages each week.

South Shields—April, 1955. Allowing fuel to be discharged from a vessel contrary to the Oil in Navigable Waters Act. Fined £20. Defendant, the chief officer of a tanker. A mile-long stretch of oil drifted down the Tyne.

Reading—April, 1955. Bankrupt failing to keep proper books of account—bankrupt contributing to his insolvency by gambling. Sentenced to two months on each charge (consecutive). Defendant, a wholesale fruit and potato merchant, within two years prior to being adjudged bankrupt materially contributed to his insolvency, to the extent of £1,220 6*s.* 4*d.*, by gambling. In mitigation the defendant's solicitor made the point that neither was an offence unless bankruptcy followed.

Aberdeen Sheriff Court—April, 1955. Being illegally in possession of two salmon and a single trammel net. One month's imprisonment. Defendant, a labourer, had five previous convictions.

Taunton—April, 1955. Entering a railway carriage while it was in motion. Fined £2, to pay 4*s.* 6*d.* costs.

Preston—April, 1955. Stealing a lead coffin. Fined £10. Defendant, a 31 year old boilerman, was seen inside a vault breaking open a small coffin and removing bones. Defendant said he had sold the coffin to a dealer for 50*s.*

MISCELLANEOUS INFORMATION

LOCAL GOVERNMENT LEGAL SOCIETY ANNUAL PROVINCIAL MEETING

More than 70 members of the Local Government Legal Society attended the annual provincial meeting at Leicester on April 30, 1955. They were entertained to luncheon by the Lord Mayor (Alderman C. H. Harris) who was accompanied by the High Bailiff (Alderman Colonel A. Halkyard, M.C., T.D., D.L.), and other members of the city council. The chairman of the society (Mr. J. K. Boynton, M.C.), thanked the lord mayor and corporation for their hospitality.

Mr. W. L. Miron, O.B.E., T.D., deputy chairman of the East Midlands Division of the National Coal Board and former secretary and legal adviser of the division, gave a paper in the morning on the subject of " The Public Corporation." After stating that the term had no statutory or judicial definition, he referred to the late Sir Arthur Street's classification into three major categories—non-industrial regulatory bodies (*e.g.*, a new town development corporation); industrial regulatory bodies (*e.g.*, an industrial development council); and managerial bodies (*e.g.*, British Transport Commission). He thought that the following definition would cover most, though not necessarily all, the bodies regarded as public corporations: " A financially autonomous body, not operating for private profit, created by an act of state, to provide a monopoly of goods or services, on a commercial basis where trading is engaged in, ultimately responsible through a Minister of the Commons to Parliament and the public but free from full continuous or day-to-day ministerial control." Commercial companies could come into existence automatically when certain formalities were complied with. Normally their affairs were regulated by memorandum and articles of association: public corporations on the other hand could only be created by Act of Parliament (or exceptionally by charter) which however contained provisions closely resembling those of the memorandum and articles. The statute (or charter) generally laid a mandatory duty on a public corporation to carry out its primary or monopolistic function, and often coupled with it the power to carry out a secondary function at its discretion. Mr. Miron wondered whether the writ of *mandamus* would lie against a public corporation at the suit of a claimant who could prove a clear right to the performance of a duty by that body. Passing to the organization of the various public corporations, he underlined the constant need for flexibility and the desirability of periodic " organization audits." He hoped something would be done to standardize the nomenclature of the various subordinate formations—the words division, district, area, sub-area, group, region, each had different connotations in relation to different corporations. Constitutionally public corporations were responsible to the Government of the day and legally they were independent legal personalities and they could sue and be sued and be made criminally liable; they had to pay rates and taxes; they had most of the rights and liabilities of a private person or body; they had come to occupy important and singular places in the constitutional life of the nation, but their final evolution had not yet been fully worked out.

CITY AND COUNTY OF THE CITY OF EXETER—CHIEF CONSTABLE'S REPORT FOR 1954

Here is one of the lucky forces, with an authorized establishment of 115, and an actual strength on December 31, 1954, of 113. During the year two constables were appointed who had previously been cadets in the force. During the Easter Recess the chief constable, with the approval of the Home Office and the co-operation of the Principal and staff of the University College of the South-West, organized a further course of refresher training for police sergeants from forces in the South Western District. It was the seventh successive course of its kind.

The housing position is discussed. Six police houses have been completed and occupied on one estate, six more will be completed and occupied by the end of 1955, and with 10 more to be built adjoining the new police headquarters it is felt that the housing problem will be solved. The new headquarters are to be begun in 1956. It is a project that has long been under consideration, and the new building is urgently needed. Its completion will be a great help to police efficiency.

Indictable offences known to police during 1954 were 813, and 65·1 *per cent.* were detected. This was an increase over the 1953 figure of 764, of which 70·8 *per cent.* were detected. Both these years, however, showed a marked decrease compared with 1951 and 1952 when the figures were 1,074 and 1,072 respectively. In 1954 some 298 offenders, including 76 juveniles, were responsible for the 529 detected crimes.

Included amongst the non-indictable offences were 599 motoring offences (530 offenders) an increase of 106 on 1953. There were five charges of driving or being in charge of motor vehicles while

under the influence of drink, and four convictions resulted. One such offender was disqualified from driving for three years.

Stress is laid on the importance of crime prevention as a primary duty of the police. A few years ago the chief constable reorganized the force to make it more flexible, and to have officers available in places where crimes were frequently committed: good results followed, but the chief constable was not satisfied, and a detective inspector was sent to the City of London to examine the methods in use there to enlist the support of property owners in an active effort to co-operate with the police. Thereafter business premises were visited and a pamphlet "A message from the chief constable" was left with the occupiers. The visiting officer was well received and many of his suggestions were adopted. Householders have also been given useful advice, for example, they have been warned against advertising their absence by messages left for the milkman and other tradespeople. This crime prevention work has a double benefit. It does help to reduce crime, and it brings the police into closer and friendly relationship with the law-abiding public.

Exeter has an acute and ever-increasing traffic problem. In 1938 a by-pass was provided to take through traffic past the city without using the main roads, which were then becoming unduly congested. In the summer of 1954, at peak periods, the congestion on the by-pass was such that one stream of traffic from it had to be directed through the city. We are not surprised to read this because the congestion at certain times, on the main roads to Devon and Cornwall, was notorious. Commenting on "obstruction" prosecutions the chief constable says that the police dislike bringing them, but since the roads are intended primarily to enable people to pass to and fro, unreasonable monopolizing of road space by selfish motorists cannot be tolerated.

The Bath and West Show presented the police with a considerable problem in traffic control. They worked in close co-operation with the Devon constabulary, and six walkie-talkie sets, operated from a fixed station at the show, were an invaluable help.

There is a very active civil defence organization for which the chief constable is responsible, the officially recognized peace-time establishment of wardens having been considerably passed.

PERSONALIA

APPOINTMENTS

Mr. Myer Alan Barry King-Hamilton, Q.C., has been appointed recorder of the city of Hereford. Mr. King-Hamilton's appointment took effect from May 6, 1955.

Mr. L. K. Robinson, senior assistant solicitor to Bristol corporation, has been appointed deputy town clerk to Birkenhead, Cheshire, corporation, in succession to Mr. R. E. Woodward, whose appointment as deputy town clerk of Leicester corporation was reported in our issue of April 16. Mr. Robinson's father is town clerk of Blackburn.

Superintendent Dennis Roy Baker, of Brighton police force, has been selected by Northampton town council as the new chief constable of Northampton. Superintendent Baker, who is 41, has been a member of the Brighton force since 1932. He was chosen from a short list of six and will take up his new duties on July 1, succeeding Mr. John Williamson, who is retiring after 31 years in the post. In March, 1932, Superintendent Baker entered the police force as a junior clerk. He became a constable the following year and was transferred to the chief constable's office. He was promoted sergeant and assistant chief clerk in 1942. In 1948 he became an inspector and two years later rose to chief inspector. In January, 1952, when he was only 38, he was appointed superintendent in charge of Brighton's newly-formed "B" division, so becoming one of the youngest superintendents ever in Brighton police.

Mr. John Williamson was appointed chief constable of Northampton on January 1, 1924, at the age of 33 years. He served on the Police Council for many years from 1932, and was honorary treasurer of the Chief Constables' Association from 1932 to 1945. He was selected by members of the association to give evidence before committees at the Home Office on matters relating to traffic control, children and young persons and other important issues. He was also chairman of the Home Office District Conference at Birmingham, and a member of the Home Office Central Conference of Chief Constables. He has also been vice-chairman of No. 4 District Police Recruiting Board and No. 4 District Motor Patrol Training Sub-Committee. Mr. Williamson has served on social welfare committees and has been particularly interested in juvenile welfare.

Superintendent H. Watson, head of the Dereham division of Norfolk constabulary, has been appointed assistant chief constable of Cumberland and Westmorland. His appointment comes five months after his promotion from chief inspector to take over the Dereham division. Superintendent Watson has achieved rapid promotion since he joined the police force as a constable in 1934, and is probably one of the youngest men in the country to be appointed an assistant chief constable. He was a qualified chartered accountant when he joined the Ashton-under-Lyne, Lancs., borough police. Three years later he was promoted to sergeant, having become a qualified inspector of weights and measures in 1935. In February, 1942, he joined the King's Lynn, Norfolk, borough police with the rank of inspector, and four years later was seconded to the Home Office as deputy commandant of No. 5 District Training Centre at Eynsham Hall, near Witney in Oxfordshire. When he returned to Norfolk in June, 1950, he was appointed training officer with the county police. He was promoted chief inspector and transferred to the North Walsham division in December, 1953. Twelve months later he was promoted to superintendent, and last December moved to Dereham to succeed Superintendent A. Staley on his retirement. Superintendent Watson's post in Cumberland is a new appointment. Previously the office of deputy chief constable has been combined with that of superintendent of the Penrith division.

Miss M. Muckersie, Mr. A. C. Garrett, Mr. E. R. Jones and Mr. A. M. Richards have been appointed whole-time officers in the London probation service. All were appointed with effect from May 2, 1955, and had been trained under the Home Office training scheme.

Mr. A. B. Robson, the chief assistant to the clerk to the Blaydon, Durham, petty sessional division justices, has been appointed to the post of chief assistant to the justices' clerk for the Jarrow and Blaydon petty sessional divisions in the county of Durham. Mr. Robson was employed as an assistant in the office of the clerk to the justices for the former Gateshead county petty sessional division from 1931 to 1940. In 1946 he was appointed to his present position.

RETIREMENT

Mr. Bert Hudson, assistant chief constable of Leeds, is to retire on July 31. Mr. Hudson, who is 65 on July 19, will have completed more than 43 years' service with the Leeds force when he retires. A native of Leeds, he joined the Leeds city police as a constable and has served at headquarters the whole time. He became a sergeant in 1918, inspector and chief clerk of the force in 1920, chief inspector in 1923, superintendent in 1926, chief superintendent (the first in the force) 1937, and assistant chief constable in 1938. Mr. Hudson has served under six chief constables—Major G. G. Tarry, Mr. W. Burns Lindley, Colonel F. J. Lemon, Mr. R. L. Matthews, Mr. F. Swaby and Mr. J. W. Barnett.

OBITUARY

Mr. David John Phillips, town clerk of Llanelly, Carms., from 1935 to 1952, has died at the age of 68.

A FAMILIAR PICTURE

Family Heir-looms,
Centuries old,
Sent to the Sale Room,
Sent to be sold.

Never before
Did occasion arise,
But now it occurs
Because somebody dies.

Treasured possessions
Lending their beauty
Must sadly be sold
To assist with the duty.

J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law — *Malicious damage — Compensation — Indictable offence.*

At 118 J.P.N. 824, the answer to question one is to the effect that "there is no provision for the award of compensation for damage upon conviction of an indictable offence under the Malicious Damage Act, such as there is under s. 14 of the Criminal Justice Administration Act, 1914, and the court has no power to order payment of compensation in the circumstances."

Whilst I can find nothing in the Malicious Damage Act, 1861, which is in *direct* conflict with your views, I feel that such an award is not only made possible but can quite properly be made by virtue of the provisions of ss. 64 and 65 of the Act. These sections deal (i) with the application and forfeitures upon summary conviction, and (ii) with the recovery of forfeitures for the "amount of injury done . . .," and I would appreciate your valued opinion upon the application of these provisions.

Section 66 of the Malicious Damage Act, 1861, which was repealed by the Criminal Justice Act, 1948—probably on account of the implications of s. 11 (2) of the Criminal Justice Act—quite clearly provided for the award of compensation for damage upon summary conviction for any offence against the Act. S. SEE-N-EL.

Answer.

Sections 64 and 65 do not confer power to award compensation. They prescribe procedure for fixing the amount of any forfeiture and for enforcing it, in cases where forfeiture may be ordered, as for instance under s. 41. The amount of the forfeiture is apparently to be applied as compensation. These sections appear to refer to summary proceedings for offences in respect of which there is a specific power to order forfeiture and not to all offences of malicious damage.

2.—Evidence—*Cross-examination—Unfair treatment of witness.*

Two or three solicitors, who appear before a local court, are incurring some unpopularity with the bench on account of their method of cross-examining witnesses. From personal observation I should say their style is based by a too literal endeavour to emulate the style of advocacy portrayed in the works of Dickens.

However harmless, disinterested or impartial a witness may be, there can be no mistaking the air of sneering contempt with which they are addressed by the solicitor in question. First he consults his notes of their examination in chief as if he was examining a list of their previous convictions. "I see you described the car in front of you as coloured red," he says. "Yes," replies the witness. "That's what you thought," retorts the cross-examiner. "Will it surprise you to know I shall bring evidence that it was pink?" This crushing rejoinder is followed by a string of questions in as confusing terms as possible, and put as rudely as possible, in order to obtain some foolish reply, and in the final speech the witness is declared to have been so unreliable and ridiculous that no reliance whatever can be placed on anything he said. Apparently the sole purpose of the witness, in coming several hundred miles, was to exhibit in court, and in a case where he could have no personal interest, his competence as a liar or incompetence as a fool.

The chairman, as a layman, hesitates to intervene, in case by some chance the solicitor is deviating into sense which will presently appear, while the clerk, except for observing that the reply to the same question put six times is perfectly clear to all except the cross-examiner, and put six times more is not likely to be varied, does not feel it is in his province to protest.

As these solicitors are mistaken in thinking the intelligence of the bench is no greater than their own, the actual practical result is only amused contempt; but it has occured to several that it does not encourage anyone to come forward to give evidence, if he is thereby to be exposed to unchecked rudeness or even insult, when it is evident he is doing his best to remember circumstances perhaps after a period of some months.

Is it your opinion that the chairman or the clerk should intervene or that the witness could be made to understand that the advocate's methods and innuendoes do not meet with the approbation of the court. S. SILEX.

Answer.

This is a difficult matter. Some latitude is always allowed in cross-examination by the defence, and anything like frequent interventions from the bench is deprecated, lest the defence should be hampered. Questions that appear irrelevant may be leading up to some issue which is relevant to the line of defence, and so it often seems necessary to admit what appears on the face of it irrelevant. That, however, does not mean that the defending advocate has a free hand to treat witnesses as he pleases. If he appears to be trying deliberately to confuse the witness, by a bullying manner, or by asking several questions at once, he may be required to put one question at a time, and told that the witness must be allowed to answer without being hurried or interrupted. He may also be prevented from putting the same question over and over again. Naturally, a witness who shows signs of hostility, or who appears to be evading the question may be pressed, and so may a witness whose evidence is strongly disputed, but at the same time there is no excuse for insults or hectoring. The chairman is the right one to deal with unfair treatment of witnesses, and this he may do by reminding the advocate, quietly but firmly, that the bench must protect witnesses from unfair or discourteous treatment, and sometimes by saying a few reassuring words to the witness and explaining that he must not mind being questioned closely but that the magistrates will see that he is given time to answer and opportunity to answer in full. The clerk may properly be consulted or may tender advice about any question of the admissibility of any line of cross-examination and the relevancy of any points raised.

The question of cross-examination and its limits, and the power of the court to disallow questions, is dealt with in *Phipson on Evidence*, 8th edn., p. 470.

3.—Landlord and Tenant Act, 1954—*Seasonal lettings and licences.*

The council have granted a number of tenancy agreements and licences in respect of what appear to be "business premises" and the question arises whether the occupiers are entitled to the protection afforded by part II of the Act. The council's form of tenancy agreement or licence reserves a right to terminate the tenancy or licence if the premises are required in connexion with any public improvement or development.

Please advise:

1. Whether part II of the Act applies in any of the following cases:

(*a*) Stalls let, for example, for the sale of ice-cream, fancy goods, etc. The tenancy agreements are for a period of years and whilst the tenants are not restricted to carry on their business during the summer season only, this in fact is what happens during the tenancy. The tenant operates during the summer season only and closes throughout the winter months.

(*b*) Premises let to coach companies and proprietors of pleasure steamers for the purpose of booking and inquiry offices. Here, again, the tenancy agreements are for a period of years. In some cases the tenant operates only during the summer season each year, although there is no restriction in the tenancy agreement requiring the premises to be closed during the winter months, and in other cases the premises are open throughout the year.

(*c*) Kiosks and stalls which are occupied under licence. The licensees are authorized to use the premises for specified business purposes during the period from April to October in each of a number of years.

(*d*) Sites which are occupied under licence. The licensees are authorized to place a hut or kiosk on a certain site during the period from April to October in each of a number of years, and to use the hut or kiosk for specified business purposes. The huts, etc., are removed from the site at the end of the season and not replaced until the beginning of the next season.

(*e*) Certain trading rights (*e.g.*, taking and selling of photographs, operation of pleasure boats, etc.) are granted by way of licence. Under the terms of the licence, the licensee may operate in a specified area during the period from April to October in each of a number of years, and he is also given the right to occupy and use a hut or stall in connexion with his business during a like period each year.

2. Whether the proviso for termination can be operated by the council should the premises be required during the period of the tenancy or licence in connexion with a public improvement or development, having regard to the provisions of the Act.

BORQUO.

Answer.

As we have mentioned from time to time, the courts have been prepared to find that a tenancy was created by what might have

been regarded as a mere licence, when such a finding was necessary to give effect to what they believed was originally intended, and to protect the weaker party. But this was at common law, and we do not expect the same readiness to favour licensees seeking to benefit from the inroads upon the common law made by the Act of 1954. Upon the specific questions:

1. (*a*) and (*b*). Looking to the definition of tenancy in s. 69, we think so, even though the tenant locks up the demised premises for some months.

(*c*) We do not think so, looking to the definition in s. 69 and such cases as *Booker* v. *Palmer* [1942] 2 All E.R. 674.

(*d*) and (*e*) The same, *a fortiori*.

2. The council's notice will be a "notice to quit," and must be in the prescribed form. Section 25 (5) and (6) will apply, and the council's ground for terminating will be (*g*) in s. 30, upon the view that public improvements and development are the council's "business," by virtue of s. 23 (2).

4.—Magistrates—*Practice and procedure—Execution of witness warrant—Liability of witness to remain in custody after arrest—Power of court to remand.*

I shall be glad to know whether you agree with me:

(*a*) That where a witness is brought before a court on a warrant and the court, for any reason, is unable to proceed with the case, that the court has no power to remand the witness nor, indeed, any power at all to deal with him.

(*b*) That if a witness is arrested on a warrant to be brought before a court on a specified date that, from the time of his arrest until that date, the witness must be kept in the custody of the police.

J. SEDMON.

Answer.

(*a*) We agree.

(*b*) We agree, but we think that once the witness is arrested the court should be informed so that arrangements may be made, if possible, to expedite the hearing of the case. It is highly undesirable that a witness should be detained in police custody in these circumstances, and strong reasons would be needed to justify his early arrest. The prescribed form of warrant directs the police "to bring the witness on....day the.....day of.....19.... before the magistrates' court....." and the warrant should be executed with that object only in mind.

5.—Public Health Act, 1936—*Sewerage work in rural district—Notice to parish council.*

The rural district council has a council housing estate, which is still growing, in a certain parish. That council has not notified the parish council of its plans for the works of sewerage which are from time to time necessary for the housing estate. It seems to me that, by s. 15 (4) of the Public Health Act, 1936, the rural district council cannot legally adopt the plans until it has notified the parish council of them. The rural district council says that it need not give notice under the section, because:

(*a*) the cost of the sewerage will be included in the capital cost of the houses and no charge made against the rates; and

(*b*) section 20 (2) of the Act provides that a sewer constructed by a local authority for the purpose only of draining a property belonging to them shall not be deemed to be a public sewer until it has been declared to be one, and s. 15 of the Act relates to public sewers.

It appears to me that (*a*) is, if true, irrelevant and that, so far as (*b*) is concerned, even if the works are not "public sewers" within the meaning of the Act, that would not take them outside the scope of s. 15 (4) of the Act, which is a substantive enactment in itself and does not depend in any way upon previous subsections. In my view, if "works for the sewerage of any part of their district," an expression not defined by the Act, can be related to an expression which is so defined, it must be with "sewer" and not with "public sewer." The works are clearly "sewers" within the meaning of s. 343 of the Act.

I cannot find anything in *Lumley* (12th edn.) which throws any doubt on the correctness of my view. The rural district council is adamant that I am wrong. I should be grateful for your opinion. What remedy has the parish council, if my view is the correct one?

DEALIN.

Answer.

We agree with you for the reasons given. *Lumley's* note infers that the remedy is for the parish council to lodge with the Minister of Housing and Local Government an objection to the works, or to the sanctioning of the necessary loan. It seems too late now, when some such works have been carried out and the estate is still growing. Had the parish council moved early enough, they would also have been on strong ground to apply for an injunction, restraining the rural district council. But it seems too late now, and an injunction is, in any case, at the discretion of the court. We should expect a Judge in the Chancery Division to say: "I agree with the parish council on the legal point, but I am not prepared to hold up a housing scheme. The district council had better comply with s. 15 (4) next time."

6.—Road Traffic Acts—*Driving while disqualified—Offender under 21—His age as a special reason for not sending him to prison.*

By s. 17 (2) of the Criminal Justice Act, 1948, no court shall impose imprisonment on a person under 21 unless it is of opinion that no other method of dealing with him is appropriate. By s. 107 (3) of the Magistrates' Courts Act, 1952, if a court is of that opinion its reason therefor must be stated in the warrant of commitment and in the register.

By s. 7 (4) of the Road Traffic Act, 1930, a person convicted of driving while disqualified is liable to imprisonment unless the court think, having regard to the special circumstances of the case, that a fine would be an adequate punishment. "Special circumstances" in this section appears to mean the same as "special reasons" in ss. 15 and 35.

A person aged over 17 but under 21 is convicted of driving while disqualified, and has no previous convictions apart from that in respect of which he was disqualified: in other words a court would not normally imprison him. He makes no attempt to plead "special circumstances," and in fact no "special circumstances" appear to exist. The fact that he is under 21, being essentially special to him and not to the offence, would not appear to be "special circumstances."

There is thus a conflict between the two sections, and I should be grateful if you would let me know whether in your opinion the proper course is for the court (*a*) to imprison or (*b*) to fine; and what reason can be given by the court for adopting whichever course you would advise it to adopt.

JOBLOX.

Answer.

This is a question which cannot be answered with certainty without guidance from the High Court.

The provisions are conflicting, and indeed contradictory. The later one is that in the 1948 Act, and it can be argued that the earlier provision must be construed so as to give effect to the later one.

We think the decision in any particular case must depend, in part, on the circumstances of the case and also on how near the offender is to 21. If in a particular case the court's view is that s. 17 (2) should prevail the reason could properly be that the court considered that they must have regard to the provisions of s. 17 (2) of the 1948 Act, and were not able to say that in their view a fine was not appropriate.

If, however, the court felt the circumstances justified their sending the offender to prison the reason could well be that the court had considered both the provisions of s. 17 (2) of the 1948 Act and also those of s. 7 (4) of the 1930 Act, and that having regard to the gravity of the offence and to the lack of mitigating circumstances they felt that imprisonment was the only appropriate punishment.

7.—Sewerage—*Reconstruction of culvert—Liability of landowners.*

A culvert constructed many years ago runs through the heart of this town carrying a small stream, and a good deal of storm water and sewage is drained into it. At one point along its length it runs under the gardens of residential property, but it is not known whether the culvert was constructed after or before the erection of the houses. A small area of the culvert has collapsed in a back lane repairable by the corporation, and has taken with it part of the back walls of the gardens of the two end properties.

It is now proposed to widen the lane at this point by a matter of a few feet, and to reconstruct the culvert so that it will henceforth be under the back lane. It appears that the owners of the properties are in agreement with the proposal and are prepared to give up the area of land required, subject to their being involved in no cost and to having their back walls reconstructed.

The cost is large and the questions that arise are these:

1. Can the owners be required to reconstruct the portion of the culvert which passes under their land at their own cost (s. 264, Public Health Act, 1936).

2. Can the corporation contribute the whole or part of the cost involved or enter into an agreement with the owner (s. 265, Public Health Act, 1936).

3. Since the owners are prepared to give up the land involved would it not be simpler to rely on s. 154, Public Health Act, 1875?

P. CYCLOPS.

Answer.

1. Yes, in our opinion, but the question may be involved with the difficult question of whether the whole is now a sewer. If the owners were advised to raise this latter question, expense might be caused.

2. Yes, as above.

3. Yes, and probably the most businesslike course.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*Contd.*)

CITY AND COUNTY OF THE CITY OF LINCOLN

Second Assistant Solicitor

APPLICATIONS are invited for this appointment. Salary £780 × £30—£900.

Local Government experience is not essential, but applicants should have a sound knowledge of conveyancing and common law. The duties will include advocacy. The post is superannuable and a medical examination will be necessary.

Applications, stating age, qualifications and experience, together with the names and addresses of two referees, and endorsed "Assistant Solicitor," must be received by me not later than Friday, May 27, 1955.

Canvassing will disqualify.

J. HARPER SMITH,
Town Clerk.

Town Clerk's Office,
Lincoln.
May 3, 1955.

CARDIGANSHIRE COUNTY COUNCIL

Deputy Clerk of the County Council and Deputy Clerk of the Peace

APPLICATIONS are invited for the above post. The salary will be as follows:

Deputy Clerk of the County Council—£1,040 per annum × £50—£1,240 per annum.

Deputy Clerk of the Peace — £100 per annum.

Application forms and conditions of service may be obtained from me.

Closing date for applications, June 11, 1955.

J. E. R. CARSON,
Clerk of the County Council.

Swyddfa'r Sir,
Marine Terrace,
Aberystwyth.

YORK CITY MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk

APPLICATIONS are invited from duly qualified persons for the whole-time appointment of Clerk to the Justices for the City of York. The total population is 106,600 and the salary scale is £1,550—£1,700, according to experience. The successful applicant will be required to take office as from January 1, 1956. The post is superannuable.

Applications, giving full particulars of qualifications and experience, together with three references, should be received by me not later than June 1, 1955, and envelopes should be marked "Justices' Clerk."

H. C. SCOTT,
Clerk to the Justices.

The Law Courts,
Clifford Street,
York.

When replying to advertisers please mention the Justice of the Peace and Local Government Review

GLOUCESTERSHIRE

Children's Department

ASSESSMENT Officer, A.P.T. Grade I (£500—£580); Intermediate D.M.A. Examination or equivalent. Duties include assessment and enforcement of parental contributions under the Children Act, 1948. The person appointed will be authorized to attend Magistrates' Courts for the purpose of obtaining and enforcing Contribution Orders and must be able to drive a car. Experience in similar work an advantage. Post superannuable. Medical examination before appointment.

Applications, stating age, qualifications, experience, and names of three referees, to the Children's Officer, St. John's Lane, Gloucester, within 14 days of the appearance of this advertisement.

GUY H. DAVIS,
Clerk of the County Council.

BOROUGH OF BEDFORD

Quarter Sessions and Committee Clerk

APPLICATIONS are invited for the above appointment. Salary scale A.P.T. III commencing according to qualifications and experience. Housing available if required. Applications, stating age, qualifications (experience of Quarter Sessions and Committee work), appointment held (with dates and salaries), to Town Clerk, Town Hall, Bedford, by June 6, 1955.

G. F. SIMMONDS,
Town Clerk.

Town Hall,
Bedford.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (T. E. Hoyland, Ex-Detective Sergeant) Member of The Association of British Detectives, World Secret Service Association and Associated American Detective Agencies. DIVORCE — OBSERVATIONS — ENQUIRIES—Civil and Criminal investigations anywhere. Over 1,000 Agents. Over 27 years C.I.D. and Private Detective Experience at your Service. Empire House, 10, Piccadilly, Bradford. Tel. 25129. (After office hours, 26823.) Established 1945.

ALL INSTRUCTIONS IN THE NORTHERN COUNTIES for immediate attention instruct—J. E. POLLARD—successor to David Cohen established 1921, and incorporating PARKINSON & CO., of East Boldon. Private Investigators, Status Investigators, Genealogists, Process Servers. 5 TUNSTALL PARK, SUNDERLAND, CO. DURHAM. Telephone: Sunderland 67005. INVESTIGATIONS CONDUCTED ANYWHERE.

"PRIVATE ENQUIRY BUREAU" (Principal, Wilfred H. Sly), Member of the "Association of British Detectives," discreet, and confidential enquiries, domestic, civil, and commercial, process service, and all class of business transacted covering personally, West Somerset, Nth. Devon and Exeter Districts. World interchange Service, with confidential agents. Established, 1945, Head Office, Heather Bell, 45 Quay Street, Minehead, Som.

Second Edition

Notes on JUVENILE COURT LAW

BY

A. C. L. MORRISON, C.B.E.,

FORMERLY SENIOR CHIEF CLERK OF THE METROPOLITAN MAGISTRATES COURTS

NOTES ON JUVENILE COURT LAW is a summary of the principal Statutes and Statutory Instruments dealing with children and young persons appearing before the juvenile courts, together with some provisions relating to adoption. In a pocket size, the Summary consists of 24 pages.

"Those who are frequently in juvenile courts will save themselves time and trouble if they have this booklet."
Solicitors' Journal

"Rarely that one finds such good value at the present time for 2s. 6d."
Irish Law Times and Solicitors' Journal

"Should be useful alike to the practitioner whose incursions to the juvenile court are infrequent, the probationer, the children's and educational welfare officers, and the juvenile panel magistrate who wishes to have a cheap, portable and concise handbook to the work of the courts." *Law Journal*

PRICE 2s. 6d. net. Copies in bulk: 10 copies £1 1s., 25 copies £2 6s., and 50 copies £4.

Justice of the Peace Ltd.
Little London, Chichester.

REGISTER OF LAND AND ESTATE AGENTS, AUCTIONEERS, VALUERS, AND SURVEYORS

CHESHIRE

CHESTER.—HARPER, WEBB & CO., Chartered Surveyors, Rating Specialists, 35 White Friars, Chester. Tel. 20685.

CORNWALL

FALMOUTH.—ROWE & KNOWLES, Strand, Falmouth. Tel.: 189 and 1308.

DEVON

AXMINSTER. — ARNOLD L. BALDOCK, B.Sc., A.R.I.C.S., Chartered Surveyor, Valuer, Land Agent, Shute, Axminster. Tel. 2388.

EXETER.—RIPPON, BOSWELL & CO., F.A.I., 8 Queen Street, Exeter. Est. 1884. Tel. 59378.

EXMOUTH.—PURNELL, DANIELL & MORRELL, 7 Exeter Road. Tel. 3775. Auctioneers and Estate Agents; Surveyors and Valuers. Also at Honiton and Sidmouth.

ESSEX

ILFORD AND ALL ESSEX.—RANDALLS, Chartered Surveyors, Auctioneers, Valuers, 1 Medway Parade, Cranbrook Rd., Ilford. Est. 1884. Tel. ILFord 2201 (3 lines).

GLOUCESTERSHIRE

CIRENCESTER AND COTSWOLDS.—HOBBS & CHAMBERS, F.R.I.C.S., F.A., Market Place, Cirencester. (Tel. 62/63) and Faringdon, Berks.

HERTFORDSHIRE

BARNET & DISTRICT.—WHITE, SON & PILL, 13/15 High Street. Tel. 0086, and at New Barnet.

KENT

BECKENHAM—BROMLEY.—SUTCLIFFE, SON & PARTNERS, Estate Agents and Surveyors. The Old Cottage. Estate office, opp. Shortlands Station, Kent. Tel. RAV. 7201/6157. Also at 20 London Road, Bromley. RAV. 0185/7.

EAST KENT.—WORSFOLD & HAYWARD, offices at 3 Market Square, Dover; 11 Queen Street, Deal; 4 St. Margaret's Street, Canterbury. Established 1835.

LANCASHIRE

BARROW-IN-FURNESS, NORTH LANCASHIRE AND SOUTH CUMBERLAND.—CHARLES G. LOWDEN, Chartered Surveyor & Auctioneer. Est. 1869. 18/24 Cornwallis Street, Barrow-in-Furness. Tel. Barrow 364.

LANCASHIRE—(*Contd.*)

BLACKBURN & EAST LANCASHIRE.—SALISBURY & HAMER (Est. 1828). Mills and Works Valuers, Auctioneers and Estate Agents, 50 Ainsworth Street, Blackburn. Tel. 5051 and 5567.

LIVERPOOL & DISTRICT.—JOS. RIMMER & SON, (Charles F. Reid, Robert Hatton.) 48 Castle Street, Liverpool, 2. Tel. Central 3068. Chartered Surveyors, Chartered Auctioneers and Estate Agents.

GEO. H. EDWARDS & CO., 3 and 4 Williamson Sq., Liverpool 1. Est. 1880. Tel. Royal 2434 (2 lines).

MANCHESTER.—EDWARD RUSHTON, SON & KENYON, 12 York Street. Est. 1855. Tel. CENtral 1937. Telegrams Russokon.

LEICESTERSHIRE

LEICESTER, LEICESTERSHIRE & MIDLANDS.—MONTAGUE TURNOR, F.A.L.P.A., F.V.I., Auctioneer, Estate Agent, Surveyor and Valuer, 27 Belvoir Street, Leicester. (Tel. 65244-5.)

LONDON AND SUBURBS

GER. 5851 ✱ **SHAWS** BRI. 7866 ✱

(E.A.L.) LTD.

"ESTATE OFFICES," 76-80 SHAFTESBURY AVE., W.1. *and at* 151 DULWICH ROAD, S.E.24

J. H. W. SHAW, P.P.C.I.A., F.A.L.P.A., F.V.I.

ANDREWS, PHILIP & CO., Chartered Surveyors, Lloyds Bank Chambers, 1 Walm Lane, N.W.2. Tel. Willesden 2236/7.

DRIVERS, JONAS & CO., Chartered Surveyors, Land Agents and Auctioneers, 7 Charles II Street, St. James's Square, London, S.W.1. WHitehall, 3911. Also at Southampton.

FAREBROTHER, ELLIS & CO., 29 Fleet Street, E.C.4.

H. C. WILSON & CO., 51 Maida Vale, W.9. Est. 1853. Tel. Cunn. 6111 (4 lines).

WARD SAUNDERS & CO., Auctioneers, Surveyors, Valuers, Estate Agents, 298 Upper Street, London, N.1. Tel. CANonbury 2487/8/9.

CHELSEA.—WHELEN & CO., Markham House, 138a Kings Road, S.W.3. Tel. KNightsbridge 4451. Also in Sloane Street, S.W.1. Tel. SLOane 1891.

WINCHMORE HILL, ENFIELD, SOUTHGATE, AND NORTH LONDON SUBURBS.—KING & CO., Chartered Surveyors and Valuers, 725 Green Lanes, N.21. LAB. 1137. Head Office, 71 Bishopsgate, E.C.2.

MIDDLESEX

HOUNSLOW.—ROPER, SON & CHAPMAN, Auctioneers, Surveyors, etc., 162 High Street. Tel. HOU 1184.

POTTERS BAR & DISTRICT.—WHITE, SON & PILL, 58 High Street. Tel. 3888.

NOTTINGHAMSHIRE

NOTTINGHAM.—KINGSTON & PARTNERS, Surveyors, Valuers, Town Planning Consultants and Industrial and Rating Valuers, 14 Chaucer Street. Tel. 45290.

RETFORD.—HENRY SPENCER & SONS, Auctioneers and Valuers, 20 The Square, Retford, Notts. Tel. 531/2. 9 Norfolk Row, Sheffield. Tel. 25206. 91 Bridge Street, Worksop. Tel. 2654.

SURREY

CAMBERLEY (HANTS & BERKS BORDERS).—SADLER & BAKER, Chartered Auctioneers and Estate Agents, 31 High Street. Est. 1880. Tel. 1619.

ESHER.—W. J. BELL & SON, Chartered Surveyors, Auctioneers and Estate Agents, 51 High Street, Esher. Tel. 12. And at 2 Grays Inn Square, W.C.1. Tel. Chancery 5957.

GUILDFORD.—CHAS. OSENTON & CO., High Street. Tel. 62927/8.

OXTED.—PAYNE & CO., Surveyors, Valuers and Auctioneers, Station Road, West, Oxted. Tel. 870/1. And at East Grinstead, Sussex.

SUSSEX

BOGNOR REGIS, CHICHESTER, SELSEY & DISTRICT.—CLIFFORD E. RALFS, F.A.L.P.A., Auctioneer, Estate Agent, Surveyor, Knighton Chambers, Aldwick Road, Bognor Regis. (Tel.: 1750).

BRIGHTON & HOVE.—H. D. S. STILES & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 101 Western Road, Brighton 1. Tel. Hove 35281 (3 lines). And at London.

WEST SUSSEX.—WHITEHEAD & WHITEHEAD, South Street, Chichester (Est. 1899). Tel. 2478—3 lines. And at Bognor Regis, Pulborough & Havant (Hants.).

WARWICKSHIRE

BIRMINGHAM.—J. ALFRED FROGGATT & SON, F.A.I., Chartered Auctioneers, Valuers & Estate Agents, Unity Buildings, 14 Temple Street, Birmingham. Tel. MIDland 6811/2.

Printed in Great Britain by R. J. Acford Ltd., Industrial Estate, Chichester, Sussex, and published each Saturday by the Proprietors, Justice of the Peace Ltd., at the Office of the "Justice of the Peace and Local Government Review," Little London, Chichester, Sussex. Registered at the G.P.O. as a newspaper. Saturday, May 21, 1955. **Price 2s. 3d.** with Reports, post free 2s. 5d.; without Reports 1s. 3d., post free 1s. 5d. Subscription rates: £6 per annum with Reports: £3 10s. per annum without Reports.